

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4           \_\_\_\_\_  
5           UNITED STATES OF AMERICA

6                               Plaintiff

7                       vs.           Criminal Action No. 01-06ERIE

8           DANIEL J. LEVETO

9                               Defendant  
10           \_\_\_\_\_  
11  
12

13                               PROCEEDINGS

14           Transcript of Jury Trial commencing on Monday,  
15   May 23, 2005, United States District Court, Erie,  
16   Pennsylvania, before Honorable Maurice B. Cohill, Jr.,  
17   District Judge.

18   APPEARANCES:

19   For the Government:       For the Department of Justice  
20                               By: Rita Calvin, Esq.  
21                               By: Thomas Voracek, Esq.

22   For the Defendant:       Pro Se  
23                               Stephen Misko, Esq.(Standby)

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## 1 PROCEEDINGS

2 (Court convened on Monday, May 23, 2005, at 9:45 a.m.

3 in chambers.)

4 THE COURT: Good morning.

5 MR. VORACEK: Good morning.

6 MS. CALVIN: Good morning.

7 MR. LEVETO: Good morning.

8 THE COURT: Okay. We had a couple of preliminary

9 motions in limine that were filed. One from the government

10 was with respect to the Court to take judicial notice of the  
11 fact that the indictment was unsealed on a certain date,  
12 which escapes me now.

13 Does the defendant have any problem with that  
14 motion?

15 MR. LEVETO: Your Honor, I don't think it's  
16 appropriate that I respond to that or --

17 THE COURT: I am just asking if you have any --

18 MR. LEVETO: I don't have it.

19 THE COURT: Okay. Well, we will take judicial  
20 notice of the fact that the indictment was unsealed.

21 I better, for the sake of the record, say when, but  
22 I don't remember when. December 11, 2001. And we will take  
23 notice of that fact. Okay.

24 Then the second was the one with respect to the  
25 statements by alleged co-conspirators.

4

1 Was that the second one?

2 MRS. BURKOFF: (Law Clerk) I'm not sure which  
3 order you have them in.

4 THE COURT: Oh, okay. This is a motion, which I

5 will read the opening paragraph.

6 The United States is moving that we rule that the

7 following evidence is admissible during the trial:

8 One. Evidence of the defendant's prior and

9 subsequent federal tax violation history.

10 Two. Evidence of the defendant's state tax filing

11 history.

12 And, three. Evidence of the defendant's flight

13 shortly after the unsealing of the indictment in this case.

14 Does Mr. Leveto have any response to that?

15 MR. LEVETO: No, I don't, Your Honor.

16 THE COURT: We'll grant that motion.

17 Then the last one is one which I mentioned in the

18 opinion which I submitted a long, long time ago, leaving open

19 the question of exclusion or non-exclusion of statements by

20 co-conspirators.

21 In the opinion, which was -- I say it was a long

22 time ago, I don't know when, I said this:

23 The defendant moves to exclude co-conspirator

24 declarations pursuant to 801(d)(2)(e) of the Federal Rules of

25 Evidence and requests that we hold a pretrial hearing

1 pursuant to United States against James, 590 F.2d 575, at  
2 pages 579 to eighty, Fifth Circuit, 1979.

3 And I denied the motion for a formal hearing in the  
4 matter. I said I would decide -- make the decision prior to  
5 the commencement of the trial.

6 And I have had these types of situations before and  
7 it's been my experience that the way to do it is for the  
8 Court to determine -- and this has to come as evidence  
9 unfolds -- but whether or not there is a possibility that the  
10 jury may find that a conspiracy existed here. And then you  
11 let the statement in, and then you tell the jury in your  
12 final instructions that it's up to them to decide, A, whether  
13 or not these statements came from people involved in a  
14 conspiracy and then, secondly, they have to decide -- the  
15 jury has to decide whether or not they believe those  
16 statements.

17 Does the government have any elaborations to make  
18 on that?

19 MS. CALVIN: No, Your Honor.

20 THE COURT: Okay. Do you have any response to

21 that, Mr. Leveto?

22 MR. LEVETO: No, Your Honor.

23 THE COURT: Okay. Well, that is the way we'll

24 handle it. I'll make it clear in the instructions to the

25 jury as to what we're doing.

6

1 Now, Nancy said you had a motion this morning,

2 Mr. Leveto?

3 MR. LEVETO: Well, it's a motion, kind of follows

4 up to the action that I filed last week that I'm sure that

5 Your Honor is aware of.

6 THE COURT: By that motion, I assume you are

7 referring to the fact that a complaint was filed by you

8 against me personally?

9 MR. LEVETO: Yes. Pursuant to 28 USC 455.

10 THE COURT: Okay.

11 MR. LEVETO: And I have here, it was sent and put

12 in prison mail last night, a challenge for cause, basically

13 an affidavit and declaration for your recusal from this case.

14 And I realize it's pursuant to 28 USC 144, and I realize also

15 that there is a ten-day window before the proceedings for  
16 that, but the statute does make a provision for good cause,  
17 which I have pled in that filing.

18 THE COURT: Okay. Well, I've read your complaint.  
19 I am not going to grant the motion. I mean, that would open  
20 the door for any defendant any time to file an action against  
21 the Judge personally and then get him to recuse, and I am  
22 just not going to do it.

23 I've read through it and I feel that there are  
24 other ways for that particular kind of a complaint to be  
25 filed. It will be referred to the Third Circuit to assign

7

1 another Judge to preside over that matter and I will be  
2 represented at the appropriate time by some lawyer from the  
3 Department of Justice.

4 MR. LEVETO: That speaks to that, but it doesn't  
5 speak to this. This is a totally different thing.

6 THE COURT: I'm denying the motion to recuse.

7 MR. LEVETO: But, I don't believe it's appropriate  
8 that this motion, without hearing or discussing information



9 for the -- the information in it for cause leaves the door

10 open for that.

11 I mean, I have a right to have -- I have a

12 constitutional right to have a trial by an impartial Judge.

13 THE COURT: Sure.

14 MR. LEVETO: If I have made that allegation and I

15 have filed this and the provision in 28 USC 144 is that I am

16 allowed to do this. And if I pled good cause, it has to be

17 decided on the merits of it.

18 THE COURT: I decided you didn't plead good cause.

19 MR. LEVETO: Your Honor, I don't believe that this

20 is for you to decide this particular motion.

21 THE COURT: The decision about whether to recuse or

22 not is my decision, and I am denying it.

23 MR. LEVETO: Well, I cannot take part in it. I

24 think it's highly improper, and I am just saying to you, and

25 I would like to put on the record, that I do have a right to

8

1 have a trial by an impartial Judge and --

2 THE COURT: I agree.

3 MR. LEVETO: And I believe it is far more than

4 smoking guns. And apart -- and as I am sure you are aware  
5 that as recently as 2005, Franklin v. McCaughtry, quoted the  
6 Supreme Court cases that spoke of the appearance, as well as  
7 in reality, of partiality. And I believe that I should have  
8 the chance to have a hearing and adjudicate that.

9 THE COURT: Well, you'll have the opportunity at  
10 some appropriate time, but I am denying the motion to recuse  
11 and we are going to start the trial this morning.

12 MR. LEVETO: Your Honor, I'm also certainly  
13 objecting to all the information that the government is  
14 bringing forth.

15 I would like to put on the record that it is  
16 essentially a result of a void judgment of August 12th, 2004,  
17 that was severely prejudicial to me that allowed this case to  
18 survive and continue to this point.

19 I don't believe that it's proper without further  
20 adjudication to do that.

21 THE COURT: Well, the trial is going forward today.

22 MR. LEVETO: Well, Your Honor, I can't take part in  
23 a mock trial. This motion that was filed with the Court  
24 deserves more of a discussion than just a denial.

25 THE COURT: Okay. Well, it's denied. Okay. Well

9

1 then, we'll go out and pick our jury.

2 (Court recessed at 9:55 a.m. in chambers.)

3 (Court reconvened in open court at 10:30 a.m.)

4 THE COURT: Good morning. Be seated, please.

5 I would like to talk to the lawyers over at sidebar

6 for a moment.

7 (Sidebar discussion.)

8 MR. LEVETO: Your Honor, after some of the new

9 issues that have come up --

10 I don't have to put anything on, do I?

11 THE COURT: No.

12 MR. LEVETO: After some of the newer issues had

13 come up, I had additional due process concerns and I am

14 asking to be represented by counsel.

15 THE COURT: Well, we appointed Mr. Misko counsel a

16 long, long time ago. You have been represented by counsel,

17 but you didn't want to take advantage of it.

18 MR. LEVETO: Well, due to some of the newer

19 developments, Your Honor, I believe that I no longer feel

20 comfortable pro se and I do need to be represented by an  
21 attorney.

22 THE COURT: Well, this is a bit late to be asking  
23 that, so the motion is denied.

24 (End of sidebar.)

25 THE COURT: Ladies and gentlemen, my name is

10

1 Maurice Cohill, and I am one of the Judges for the United  
2 States District Court for the Western District of  
3 Pennsylvania, and I do appreciate all of you answering this  
4 call to jury duty.

5 What we are about to do is to select a jury in the  
6 case of the United States of America against Daniel Leveto.  
7 You're going to be asked a number of questions in connection  
8 with this choosing of the jury, and I am going to ask that  
9 you all stand now to be sworn to answer those questions  
10 truthfully. Will everybody rise?

11 MR. WITAS: (The Clerk) Raise your right hand.  
12 (The jury panel was sworn in.)

13 MR. WITAS: (The Clerk.) Be seated.

14 THE COURT: As I said, the name of this case is  
15 United States of America against Daniel Leveto. And in this  
16 case, Rita Genetti Calvin and Thomas G. Voracek are the  
17 attorneys for the United States Department of Justice, Tax  
18 Division, and they represent the United States.

19 Mr. Leveto is representing himself in this case,  
20 although seated at the table with Mr. Leveto is his standby  
21 counsel, Attorney Stephen Misko. And in a few minutes, I  
22 will re-introduce them to you and ask you whether or not you  
23 know any of the attorneys or the defendant.

24 The matter on which I am about to instruct is an  
25 extremely important one. Therefore, I hope that you give

11

1 these instructions very careful, important consideration.

2 You have been called as a jury panel in a criminal  
3 case which comes before you by reason of an indictment to  
4 which the defendant has pled not guilty.

5 Now, you must always keep in mind that an  
6 indictment is nothing more than a document in which the  
7 charges against the defendant are outlined. An indictment is  
8 never evidence in itself. It simply informs the defendant

9 and the -- it informs the defendant of what he has been  
10 charged and it's intended to inform you as to what charges  
11 you are going to be asked to consider. But, the indictment,  
12 itself, is simply the formal statement of the charge and its  
13 purpose is not to serve as evidence, but only to inform.

14 To this indictment, as I have said, the defendant  
15 has pled not guilty, and that raises an issue of fact to be  
16 tried by a jury. A defendant is always presumed to be  
17 innocent unless and until proved guilty beyond a reasonable  
18 doubt.

19 Now, the indictment, which some of you are going to  
20 be called upon to consider in this case, is a three-count  
21 indictment charging the defendant with, one, conspiracy to  
22 defraud the United States, two, willful subscription to a  
23 false -- that means signing -- to a false federal income tax  
24 return on April 15th, 1995, and willful subscription to a  
25 false federal income tax return on April 15th, 1994.

12

1 Now, the indictment charges this:

2 Count 1 provides that the defendant did unlawfully

3 willfully and knowingly conspire, combine, confederate, and  
4 agree with other individuals to defraud the United States by  
5 impeding, impairing, obstructing and defeating the lawful  
6 government functions of the Internal Revenue Service of the  
7 Treasury Department in the ascertainment, computation,  
8 assessment and collection of federal income taxes. The  
9 indictment further provides that the defendant committed  
10 certain overt acts in furtherance of this conspiracy.

11 This is in violation of the United States Code,  
12 Title 18, Section 371.

13 Count 2 of the indictment charges that on or about  
14 April 15th, 1995, in the Western District of Pennsylvania,  
15 the defendant did willfully make and subscribe a joint U.S.  
16 Individual Income Tax Return, Form 1040, for the calendar  
17 year 1994 which was made under the penalties of perjury and  
18 was filed with the Internal Revenue Service, which income tax  
19 return he did not believe to be true and correct as to every  
20 material matter in that he failed to disclose and omitted  
21 gross receipts from a business activity, whereas, he then and  
22 there well knew and believed that he was required to disclose  
23 the gross receipts from the business activity on his tax  
24 return and he failed to disclose that he had an interest in

25 or a signature or other authority over a financial account in

13

1 a foreign country, whereas he then and there well knew and  
2 believed that he had an interest in or a signature or other  
3 authority over a financial account in a foreign country.

4 This is in violation of 26, United States Code,  
5 Section 7206(1) and Title 18, United States Code, Section 2.

6 Similarly, Count 3 of the indictment charges the  
7 same violation of Title 26, United States Code,  
8 Section 7206(1) as charged in Count 2, which is willful  
9 subscription to a federal income tax return for the calendar  
10 year 1995.

11 Now, we're going to conduct what's called a voir  
12 dire. And a voir dire is, it's a French term simply, loosely  
13 translated, means to speak the truth. And here we are  
14 talking about speaking the truth in the answers to the  
15 questions that you are going to be asked.

16 And we use it to refer to the preliminary  
17 examination to determine the eligibility of each individual  
18 juror to be selected in this case. Please listen very



19 carefully to my questions and statements and answer  
20 accordingly, because we can only accomplish the voir dire  
21 properly if you give full and complete answers to my  
22 questions.

23 Now, as I ask each of the questions, I'll pause and  
24 I want you to raise your hand if your answer to the question  
25 is yes. For example, the first question will be:

14

1 The defendant in this case is Daniel Leveto. Do  
2 any of you know him?

3 Now, if you happen to know Mr. Leveto, we want you  
4 to put up your hand, and I would want to ask you and under  
5 what circumstances you did know him. I think if your answer  
6 to that question was yes, I would ask you to come up here to  
7 what we call sidebar, and we would talk about it out of the  
8 hearing of the other people because that's liable to foul up  
9 the entire process if you all heard the circumstances under  
10 which one person or another knew the defendant. And that is  
11 going to be true in several of the questions that I will ask.  
12 I will invite you to answer from sidebar, but most of the  
13 questions you can answer right from where you are seated.

14 Please remember to give me your name and your juror  
15 number because everything that's spoken in the courtroom has  
16 to be taken down by our Court Reporter and, of course, that  
17 also involves identifying everybody who speaks in the  
18 courtroom.

19 So, please remember if your answer is yes, I will  
20 ask you to stand, give me your name and number, then give me  
21 the answer to your question.

22 Now, Miss Burkoff, could I see that indictment for  
23 a minute? I wanted to make sure I had those dates right.  
24 Okay. You have to wait just a minute. We are going to have  
25 Mr. Witas move that screen so you can see me and I can see

15

1 you.

2 Will that door still open without knocking it over?

3 I realize you folks don't have this in front of you  
4 anyway, but I wanted to make sure on the record that I had  
5 the dates straight in this thing.

6 The indictment charges that on April 15th, 1995,  
7 Mr. Leveto filed a return which he did not believe to be true

8 and correct.

9 And Count 3 states that on April 15, 1996, he filed  
10 an individual income tax return that he didn't think was true  
11 and correct.

12 And Count 4 deals with the calendar year 1994, and  
13 that would have been due on April 15, 1995.

14 I guess I'm ten years behind. I saw that 1996 and  
15 I was thinking 2006 and we haven't even gotten there yet.

16 MR. VORACEK: Your Honor, I am sorry to interrupt.  
17 Count 4 does not apply to the defendant, Daniel Leveto.

18 THE COURT: Yes. Okay. Now, let's proceed with  
19 the questions.

20 First of all, I'll ask Mr. Leveto to stand, and  
21 stand so the people can see you.

22 Does anybody know Mr. Leveto? Okay. I see several  
23 hands there. Do you want to come on up and just line up here  
24 one at a time, and we'll ask you to come on up to sidebar and  
25 we'll talk to you one at a time.

16

1 (The juror came to sidebar.)

2 THE COURT: This is transmitting what is being said

3 over to our Court Reporter, so please speak into it each time

4 you speak.

5 Would you give me your name and number?

6 THE JUROR: Cindy Porter.

7 THE COURT: What's your number?

8 THE JUROR: 147.

9 THE COURT: How do you know Mr. Leveto?

10 THE JUROR: I don't know him personally --

11 THE COURT: Why don't we start again.

12 THE JUROR: I don't know him personally, but I know

13 of him.

14 THE COURT: And under what circumstances do you

15 know of him?

16 THE JUROR: I believe that he owned

17 Langdon & Leveto Veterinary Clinic.

18 THE COURT: Okay.

19 THE JUROR: I knew his late father, I believe,

20 Chester Leveto. And, um, nothing else.

21 THE COURT: The main point --

22 THE JUROR: I don't know him personally.

23 THE COURT: Of course, what we are trying to do

24 here is choose a jury that's going to be impartial.

25 Do you know anything or are you aware of any reason

17

1 that would make you feel unable to or unwilling to be a fair

2 and impartial juror if you are selected?

3 THE JUROR: Um, I can't really think of anything

4 other than hearing some news information.

5 THE COURT: What kind of news did you hear?

6 THE JUROR: I heard -- and I believe it would apply

7 to this case -- it might have been some other things,

8 something about islands or having money in an island, or out

9 of the country, or flying a plane, but I don't know a lot of

10 details.

11 THE COURT: Right. And, I mean, anything that you

12 should know for purposes of this case will be brought out by

13 the testimony of witnesses.

14 I guess the logical question is, do you think that

15 anything you heard on the news reports, or however you heard

16 it, would affect your ability to be a fair and impartial

17 juror?

18 THE JUROR: I don't think so. I don't think I

19 heard enough details. I just -- you know, just -- I really  
20 don't. That is all I really know.

21 THE COURT: Do you have any questions of  
22 Miss Porter?

23 MR. VORACEK: No, Your Honor.

24 THE COURT: Do you have any questions of Miss  
25 Porter?

18

1 MR. LEVETO: I would just like to have an attorney.

2 THE COURT: Thank you.

3 (The juror left sidebar.)

4 THE COURT: No remarks. You can ask her a  
5 question. You got an attorney standing behind you. If you  
6 want to refer to him, you may.

7 (The juror came to sidebar.)

8 THE COURT: You have to talk right into this thing  
9 because that goes over to our Court Reporter.

10 THE JUROR: Okay.

11 THE COURT: Give me your name first?

12 THE JUROR: Brenda Allen.

13 THE COURT: Spell your last name.

14 THE JUROR: A-l-l-e-n.

15 THE COURT: Your number?

16 THE JUROR: 205.

17 THE COURT: Okay. You indicated you know

18 Mr. Leveto.

19 THE JUROR: If I am not mistaken, he was a

20 veterinarian in Meadville, so I was a client.

21 THE COURT: Did you know him personally?

22 THE JUROR: No.

23 THE COURT: That was just in connection with the

24 treatment of some pet, or something like that?

25 THE JUROR: Yes.

19

1 THE COURT: Is there any reason that you feel if

2 you were selected here that you could not be a fair and

3 impartial juror if you were selected?

4 THE JUROR: No, I don't think so.

5 THE COURT: Any questions of Miss Allen?

6 MR. VORACEK: No, Your Honor.

7 THE COURT: Okay. Thanks, Miss Allen.

8 (The juror left sidebar.)

9 (The juror came to sidebar.)

10 THE COURT: Okay, sir. Would you give me your name

11 and number?

12 THE JUROR: 240. My name is Frank Fath.

13 THE COURT: F-a-t-h?

14 THE JUROR: F-a-t-h.

15 THE COURT: Okay. And you know Mr. Leveto?

16 THE JUROR: I don't know him personally, but I go

17 to church with his mom and his former in-laws and we were

18 pretty close that way.

19 THE COURT: In other words, you're close to other

20 members of his family?

21 THE JUROR: That's right.

22 THE COURT: Is there anything about that

23 relationship that would cause you to feel you could not be a

24 fair and impartial juror if you were selected here?

25 THE JUROR: No, there would not, Your Honor.

1 THE COURT: Any questions?



2 MR. VORACEK: No, Your Honor.

3 THE COURT: Any questions? Thank you, sir.

4 (The juror left sidebar.)

5 (The juror came to sidebar.)

6 THE COURT: You have to talk into this so our

7 Court Reporter can hear you.

8 Give us your name and number.

9 THE JUROR: Laurie, L-a-u-r-i-e, Ulbrich, U-l-b, as  
10 in boy, r-i-c-h.

11 THE COURT: U-l-b, as in boy?

12 THE JUROR: R-i-c-h

13 THE COURT: I-c-h? Your number?

14 THE JUROR: No. 225.

15 THE COURT: Tell us how you know Mr. Leveto.

16 THE JUROR: I had taken my dog to see him on  
17 occasion, and I am from the Meadville area so I have read  
18 things in the paper about it.

19 THE COURT: Is there anything that you read or any  
20 feeling you had when you were going to him as a veterinarian  
21 that would cause you to feel you could not be a fair and  
22 impartial juror if you were selected here?

23 THE JUROR: No.

24 THE COURT: Any questions of Miss Ulbrich?

25 MS. CALVIN: I wasn't able to hear well. Did you

21

1 say that you were a client or an employee?

2 THE JUROR: A client years ago.

3 THE COURT: Questions?

4 MR. VORACEK: You know Mr. Leveto personally as

5 well?

6 THE JUROR: No.

7 THE COURT: Thanks.

8 (The juror left sidebar.)

9 (The juror came to sidebar.)

10 THE COURT: You have to talk right into this thing

11 so -- that transmits the voice over to our Court Reporter.

12 Can you give me your name and number.

13 THE JUROR: Diane Minman. M-i-n --

14 THE COURT: N, as in Nancy?

15 THE JUROR: Yes. And then m-a-n.

16 THE COURT: Your number.

17 THE JUROR: 188.

18 THE COURT: Okay. How do you know Mr. Leveto?

19 THE JUROR: I don't know him personally. He's -- I  
20 had taken a couple of pets to his establishment, but I never  
21 met him personally. I heard something --

22 THE COURT: Is there anything -- what did you hear?

23 THE JUROR: Just what was in the newspapers.

24 THE COURT: What kind of reports were those?

25 THE JUROR: The tax and the bank accounts, and that

22

1 was really it. I don't remember a whole lot of details.

2 THE COURT: Did you hear anything that would make  
3 you feel you could not be a fair and impartial juror if you  
4 were selected here?

5 I mean, I'll be instructing the jury that they  
6 should disregard anything that they have heard or read  
7 outside the courtroom, that they got to base --

8 THE JUROR: I don't think so.

9 THE COURT: You don't think so?

10 THE JUROR: Yes.

11 THE COURT: Any questions? Okay. Thank you.

12 (The juror left sidebar.)

13 (The juror came to sidebar.)

14 THE COURT: Would you give me your name and number?

15 THE JUROR: Charles McErlane.

16 THE COURT: Spell your last name.

17 THE JUROR: M-c-E-r-l-a-n-e.

18 THE COURT: Your number.

19 THE JUROR: 192.

20 THE COURT: Okay. And how do you know or know of

21 Mr. Leveto?

22 THE JUROR: Your Honor, I'm from Meadville and I

23 used to live in Conneaut Lake and I believe Dr. Leveto used

24 to be my veterinarian.

25 THE COURT: Did you know him?

23

1 THE JUROR: No, not personally, just as my

2 veterinarian.

3 THE COURT: Is there anything that you read or

4 heard about this situation that would make you feel you

5 couldn't be a fair and impartial juror if you were selected

6 here?

7 THE JUROR: Yes. I know he was running from the

8 law, federal tax evasion, and I also believe federal firearms

9 are involved also.

10 THE COURT: Okay. I don't know that there are

11 firearms involved in this case. Are there? Nothing in the

12 indictment.

13 MR. VORACEK: That are alleged in the indictment,

14 Your Honor.

15 THE COURT: I think, under the circumstances, maybe

16 we ought to excuse this gentleman. You go back to your seat.

17 We are going to excuse you from this jury, but I am going to

18 ask you to sit there until there will be an appropriate part

19 later on in this proceeding where we can excuse you.

20 THE JUROR: Okay.

21 THE COURT: Thanks.

22 THE JUROR: Thank you, Your Honor.

23 (The juror left sidebar.)

24 (In open court.)

25 THE COURT: Okay. As I indicated before,

1 Mr. Leveto did choose to proceed on his own without an

2 attorney, but he has been appointed a standby counsel to be  
3 available for consultation. That gentleman is Stephen Misko.  
4 Does anybody know Mr. Misko? Thank you.

5 One of the lawyers for the United States is  
6 Rita Genetti Calvin. Does anybody know Ms. Calvin? Thank  
7 you.

8 And the other lawyer for the government is  
9 Thomas Voracek. Does anybody know Mr. Voracek? Thank you.

10 Also, one of the people that's going to be a part  
11 of this case -- he is not at counsel table, but I believe  
12 he's in the courtroom, and that's Richard Adams, who is a  
13 Special Agent for the Internal Revenue Service.

14 Does anybody know Mr. Adams? Thank you.

15 Some of these questions are going to start out by  
16 saying, are you or a member of your immediate family, and  
17 then the question. So, let me define what we mean by  
18 immediate family.

19 When I am talking about immediate family, I am  
20 talking about you and your husband or wife, you and your  
21 spouse, your parents, your children and your brothers or  
22 sisters, or if you have somebody who is part of your

23 household, but perhaps not related by blood, but somebody

24 that is so close to you, you consider that person a member of

25 the family, we would include that person.

25

1 So, we are talking about you and your spouse, your

2 parents, your children, your brother and sister, and anybody

3 else who is a member of your household that you consider to

4 be a member of your family.

5 And the question now is:

6 Are you or any member of your immediate family

7 employed by the federal government, with the exception of

8 military service?

9 Yes, ma'am. Would you stand and give us your name

10 and number?

11 THE JUROR: Rebecca Dilley. 223.

12 My sister is a secretary for -- they call them the

13 mines. M-i-n-e-s. They do government work through that.

14 THE COURT: That is for the state or for the

15 federal government?

16 THE JUROR: Federal, I believe.

17 THE COURT: Is there anything about the fact that

18 she is employed by the federal government that would make you  
19 feel you couldn't be a fair and impartial juror here?

20 THE JUROR: No.

21 THE COURT: Thank you. Yes, ma'am.

22 THE JUROR: I am Portia Lechner, juror 215.

23 My son-in-law is employed by the Federal Bureau of  
24 Prisons as a warden, Atwater(Sp) facility.

25 THE COURT: Where is that located?

26

1 THE JUROR: California.

2 THE COURT: Is there anything about his employment  
3 by the Bureau of Prisons that would make you feel unable or  
4 unwilling to be a fair and impartial juror here?

5 THE JUROR: No.

6 THE COURT: Anybody else in the jury box? Okay.  
7 Anyone else in the audience?

8 Okay. Thank you. Are you or any members of your  
9 immediate family employed by or associated with any law  
10 enforcement agency?

11 One way in the back there. Would you give us your



12 name and number real loud?

13 THE JUROR: Julie Prody. 263. Corrections

14 officer.

15 THE COURT: And you said?

16 THE JUROR: Corrections officer.

17 THE COURT: I am sorry?

18 THE JUROR: Corrections officer.

19 THE COURT: Where is that?

20 THE JUROR: Venango County Prison.

21 THE COURT: Is there anything about that person

22 being involved in law enforcement that would cause you to

23 feel unwilling or unable to be an impartial and fair juror?

24 THE JUROR: No. It's myself.

25 THE COURT: Thank you. Yes, ma'am.

27

1 THE JUROR: Denise Powell, 245. My brother is a

2 private investigator in Los Angeles County, Orange County,

3 California.

4 THE COURT: Is he on his own, you mean?

5 THE JUROR: Now he is. He was working for the

6 Orange County Sheriff's Department.

7 THE COURT: Anything about his employment in that  
8 capacity that would make you feel unable or unwilling to be a  
9 fair and impartial juror?

10 THE JUROR: No, sir.

11 THE COURT: Thank you.

12 Yes, sir. On the right.

13 THE JUROR: Juror 200. Duane Kemling. My son is a  
14 state trooper and my daughter is a detective for the City of  
15 Erie.

16 THE COURT: Would either of those close  
17 relationships make you feel you couldn't be a fair and  
18 impartial juror here?

19 THE JUROR: No.

20 THE COURT: Yes, sir.

21 THE JUROR: William Culver, 227. My father-in-law  
22 is a retired Erie police officer.

23 THE COURT: Same question to you. Would that  
24 relationship make you feel unable or unwilling to be a fair  
25 and impartial juror?

1 THE JUROR: No.

2 THE COURT: Thank you.

3 One of the investigating agencies in this case is  
4 the Internal Revenue Service, Criminal Investigation  
5 Division.

6 Do you have any personal feelings about the IRS or  
7 its operation -- other than being mad about your income  
8 taxes. Nobody likes to pay taxes. I know.

9 One of the investigating agencies in this case is  
10 the Internal Revenue Service, Criminal Investigation  
11 Division.

12 Do you have any personal feelings about the IRS or  
13 its operation that would cause you not to be a fair and  
14 impartial juror in this case, which the IRS helped to  
15 investigate?

16 That's another question that I would want to talk  
17 to you up here at sidebar if your answer to the question is  
18 yes. But, I will read it again.

19 One of the investigating agencies in this case is  
20 the Internal Revenue Service, Criminal Investigation  
21 Division.

22 Do you have any personal feelings about the IRS or

23 its operation that would cause you not to be fair and  
24 impartial in this case, which the IRS helped to investigate?  
25 What I am going to do now is slowly read through a

29

1 list of the people that may be witnesses in this case, and  
2 there are quite a few of them here, but in any event, I am  
3 going to go through this list.

4 After I read a name, I will pause, and if you know  
5 that person, I will ask you to put up your hand.

6 So, this is the list of potential witnesses:

7 Mary Somma. And that's spelled S-o-m-m-a. Deborah  
8 Swaney. S-w-a-n-e-y. Robert Lapina. That's L-a-p-i-n-a.  
9 Susannah Weis. W-e-i-s. Manuel Gonzales. G-o-n-z-a-l-e-s.  
10 Karen Jeannerett. I think that is probably right.  
11 J-e-a-n-n-e-r-e-t-t. James Scarpitti. S-c-a-r-p-i-t-t-i.  
12 Mark Curley. C-u-r-l-e-y. Robert Eveleth. E-v-e-l-e-t-h.  
13 Robert Meyers. M-e-y-e-r-s. Margaret Leveto. L-e-v-e-t-o.  
14 Mildred Custard. C-u-s-t-a-r-d.

15 Yes, ma'am.

16 THE JUROR: Denise Powell. 245. I think she's

17 also known as Millie and may have been his secretary, I

18 think.

19 THE COURT: Why don't you come on up to sidebar?

20 THE WITNESS: Okay.

21 (The juror came to sidebar.)

22 THE COURT: Don't forget to talk into this. This

23 transmits your voice over to our Court Reporter.

24 First of all, give me your name and number again.

25 THE JUROR: 245, Denise, D-e-n-i-s-e, Powell

30

1 P-o-w-e-l-l,

2 THE COURT: And let me ask, is Mildred Custard, is

3 that Millie that was the secretary?

4 MS. CALVIN: Yes.

5 THE COURT: So, you are right in that connection.

6 THE JUROR: I'm just take caring of all my -- he

7 was a vet, and either my mom took our dog to him, but I

8 didn't go, but then Millie, it was in the office in Cambridge

9 for a very short period of time, and I believe now she works

10 as a volunteer, or something, at the prison, but I have not

11 seen her in ages.

12 THE COURT: Is there anything about -- you just  
13 knew her then through going to the veterinarian office?

14 THE JUROR: Just the name. She was just a  
15 wonderful person, and that's how I know her.

16 THE COURT: Was there anything about -- in the  
17 event that she is called to testify in this case, is there  
18 anything about your relationship with her that would make you  
19 tend to believe her more than, let's say, somebody else  
20 because you knew her?

21 THE JUROR: No.

22 THE COURT: Is there anything about your  
23 relationship with her or with the veterinarian office that  
24 would make you feel you could not be a fair and impartial  
25 juror here?

31

1 THE JUROR: No. But, I do have a question for you  
2 as long as we are here?

3 THE COURT: Sure.

4 THE JUROR: I believe that it was his daughter who  
5 was a TSA(Sp) in my classroom with the students that I had

6 last year about the time that they found him. A.

7 THE COURT: Okay.

8 THE JUROR: And I don't know -- I mean, I feel I

9 can be impartial, one way or another, but I am familiar with

10 the case.

11 THE COURT: Do you remember her name?

12 THE JUROR: I can't remember her first name.

13 Usually, I don't even know their names. It was just because

14 of her last name.

15 THE COURT: Is a TSA like a temporary volunteer?

16 THE JUROR: No. She is a paid bodyguard for

17 children at school that have a tendency to be unruly.

18 THE COURT: Do you work with children?

19 THE JUROR: I'm a school teacher and they are just

20 in my room on rare occasions.

21 THE COURT: You don't have a particular cast of

22 instructors, do you?

23 THE JUROR: No. And it's been a year or two since

24 she was there because she got married and moved away.

25 THE COURT: Would that be your daughter?

1 THE JUROR: I think it is, and he just hasn't seen  
2 her for a long time.

3 THE COURT: But, you don't think there is anything  
4 in this situation that would make you feel -- that would make  
5 you feel unfair or impartial?

6 THE JUROR: No. Okay.

7 THE COURT: Okay.

8 (The juror left sidebar.)

9 (In open court.)

10 THE COURT: Okay. All right. Following that last  
11 name is Beverly Stevens. S-t-e-v-e-n-s. Barb Roberts.  
12 B-a-r-b. Maybe it is Barbara. I don't know. I just have  
13 Barb here. Roberts. R-o-b-e-r-t-s.

14 And the last name is Kim Iddon. I-d-d-o-n.

15 Yes, sir.

16 THE JUROR: I know a Barb Roberts. I don't know if  
17 she is the one in the --

18 THE COURT: Why don't you come on up and we'll  
19 talk.

20 (The juror came to sidebar.)

21 THE COURT: Okay. Would you talk right into this?



22 This transmits your voice over to our Court Reporter. Give

23 me your name and number.

24 THE JUROR: My number is -- or my name is Jim

25 Harvey.

33

1 THE COURT: H-a-r-v-e-y?

2 THE JUROR: Correct.

3 THE COURT: Your number.

4 THE JUROR: 255.

5 THE COURT: Okay. And you say you know a Barbara.

6 What is this Barb Robert's connection to the case?

7 MS. CALVIN: She was an employee of the Levetos.

8 THE COURT: She worked at the veterinarian's

9 office. How do you know a Barbara?

10 THE JUROR: From boating, I know her and her

11 husband. I actually grew up with her. I've known her for

12 years. She lived here in Erie pretty much all of her life.

13 THE COURT: Do you know where she works?

14 THE JUROR: I don't know where she works right now.

15 Her husband owns a tavern on 26th Street.

16 THE COURT: Does that ring any bells?

17 MR. VORACEK: Miss Roberts lives in Linesville,  
18 Pennsylvania.

19 THE JUROR: Different one. Sorry.

20 THE COURT: That is okay.

21 (End of sidebar.)

22 THE COURT: Now, this next question is -- you might  
23 consider it to be -- well, it is a personal type question.  
24 So, if you feel more comfortable coming up here to talk about  
25 it, that's fine. Or if it's okay to just answer it from

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1 where you are seated, that's okay, too.

2 But, the question is this:

3 Have you or a member of your immediate family been  
4 a victim of a crime or participated in a criminal case as a  
5 complainant, witness for the government or in some other  
6 capacity, perhaps as a juror?

7 Now, as I said, this may be personal. I'll repeat  
8 it. I think oftentimes we have a lot of hands that go up  
9 about whether you have been a juror or not, so I think I will  
10 make that a separate question. Forget about being on jury

11 duty for a minute.

12 The question then is this:

13 Have you or a member of your immediate family been  
14 a victim of a crime or participated in a criminal case as a  
15 complainant, witness for the government or in some other  
16 capacity?

17 As I said, you can answer from where you are seated  
18 or if you would rather come up, that's fine, too.

19 THE JUROR: If I answer yes to that --

20 THE COURT: Do you want to come up here?

21 THE JUROR: Yes.

22 THE COURT: Okay.

23 (The juror came to sidebar.)

24 THE COURT: And give us your name again,  
25 Miss Powell?

35

1 THE JUROR: 245, Denise Powell.

2 THE COURT: Okay.

3 THE JUROR: I don't remember the year. It was  
4 early eighties. I was a bookkeeper for Cardinal Enterprises,  
5 and we went to the Crawford County Courthouse, and it was

6 something to do with -- I think the main office thought that  
7 this office was messing up with the records, and whatnot, and  
8 I had to prove that my books were in order.

9 THE COURT: So, you were named as a defendant in  
10 the case?

11 THE JUROR: No. I think just like a witness.

12 THE COURT: Is there anything about that experience  
13 that would make you feel you couldn't be a fair and impartial  
14 juror in this case?

15 THE JUROR: No.

16 THE COURT: Questions? Okay. Thank you.

17 (End of sidebar.)

18 (In open court.)

19 THE COURT: Let's just wait here. I'll -- put up  
20 your hand if you want to come up here and talk.

21 (The juror came to sidebar.)

22 THE JUROR: Does this have to do with, like, the --

23 THE COURT: Might as well. As long as you are  
24 here --

25 THE JUROR: Because I was a character witness.

1 THE COURT: Give us your name and number.

2 THE JUROR: Gail Kurdas.

3 THE COURT: C-u-r-t-i-s?

4 THE JUROR: K-u-r-d-a-s.

5 THE COURT: Oh. And your number?

6 THE JUROR: 211.

7 THE COURT: You have to talk right into here.

8 THE JUROR: Okay. Well, my ex-husband got in a lot

9 of trouble with the law and I had to be a character witness

10 as to the way he was before he got in trouble.

11 THE COURT: Oh, okay. You say he is your

12 ex-husband?

13 THE JUROR: Yes. That's why, because of that mess.

14 THE COURT: Is there anything about that situation,

15 or perhaps with offenses that he may have committed, that

16 would make you feel you couldn't be a fair and impartial

17 juror if you were selected here?

18 THE JUROR: No, I don't think so.

19 THE COURT: Does anybody have any questions?

20 MR. VORACEK: Was there any way that the law

21 enforcement agencies may have treated you or him in

22 connection with this criminal situation that would cause you  
23 to be completely fair with the government?

24 THE JUROR: No, nobody ever treated me bad. No.

25 THE COURT: Any questions?

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1 Dr. Leveto nodded. I'm just saying he shook his  
2 head no.

3 THE JUROR: Is that it then?

4 (The juror left sidebar.)

5 (In open court.)

6 THE COURT: Yes, sir. Come to sidebar.

7 (The juror came to sidebar.)

8 THE COURT: Give us your name and number.

9 THE JUROR: Thomas Gregorchik, juror 167.

10 THE COURT: You better spell the last name.

11 THE JUROR: G-r-e-g-o-r-c-h-i-k.

12 THE COURT: Okay.

13 THE JUROR: I was a witness for the County of Elk  
14 in a criminal investigation or criminal complaint where one  
15 of our employees brought in explosives into our manufacturing

16 facility and blew up a truck.

17 THE COURT: Oh, he blew up a truck?

18 THE JUROR: Yeah.

19 THE COURT: Was this during a strike, or something?

20 THE JUROR: No.

21 THE COURT: Well, what company is that?

22 THE JUROR: It was Carbide Graphite Group in

23 St. Mary's, Pennsylvania.

24 THE COURT: Is there anything about that experience

25 that would make you feel -- of course, this is a different

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1 kind of a case -- but, is there anything about your

2 experience there that would make you feel you couldn't be a

3 fair and impartial juror if you were selected here?

4 THE JUROR: No.

5 THE COURT: Any questions of Mr. Gregorchik?

6 MR. LEVETO: No.

7 THE COURT: Dr. Leveto said no. Okay. Thanks.

8 (The juror left sidebar.)

9 (The juror came to sidebar.)

10 THE COURT: You have to talk right into this thing.

11 Would you give us your name and number?

12 THE JUROR: Kathryn Ziemiak.

13 THE COURT: K?

14 THE JUROR: With a K. K-a-t-h-r-y-n-e.

15 THE COURT: Last name?

16 THE JUROR: Z-i-e-m-i-n-i-a-k. No. 228.

17 THE COURT: Okay.

18 THE JUROR: I was called as a witness when I was, I

19 think, eighteen in front of a District Justice.

20 THE COURT: What kind of a case was it?

21 THE JUROR: I think somebody beat up --

22 THE COURT: You were a witness to some kind of a

23 fight or assault or something?

24 THE JUROR: Yeah. But, it got dropped, so I never

25 went there.

39

1 THE COURT: You never even testified?

2 THE JUROR: Yes. And my brother recently got a PFA

3 against his wife.

4 THE COURT: Was there some criminal activity



5 involved in that?

6 THE JUROR: Just some threats that she made, and  
7 whatnot.

8 THE COURT: Is there anything about any of those  
9 experiences that would make you feel you couldn't be a fair  
10 and impartial juror here?

11 THE JUROR: No.

12 THE COURT: Any questions of -- I am not going to  
13 try your name.

14 THE JUROR: Ziemiński.

15 THE COURT: Okay.

16 MR. LEVETO: No, Your Honor.

17 THE COURT: Dr. Leveto says no. Thank you.

18 THE JUROR: Thank you.

19 (The juror left sidebar.)

20 (The juror came to sidebar.)

21 THE COURT: Would you give me your name and number?

22 THE JUROR: Mary Joslin. No. 269.

23 THE COURT: Spell your last name.

24 THE JUROR: J-o-s-l-i-n.

25 THE COURT: J-o-f?

1 THE JUROR: S-l-i-n.

2 THE COURT: F as in Frank?

3 THE JUROR: S.

4 THE COURT: Oh, I'm sorry. J-o-s?

5 THE JUROR: L-i-n.

6 THE COURT: All right.

7 THE JUROR: My sister was robbed at a bank. She  
8 was a bank teller.

9 THE COURT: Did they ever get the people that did  
10 that?

11 THE JUROR: I think so. I was she was a witness.  
12 It was a very long time ago.

13 THE COURT: Is there anything about that experience  
14 with your sister that would make you feel you couldn't be a  
15 fair and impartial juror?

16 THE JUROR: I don't think so.

17 THE COURT: Any questions of Miss Joslin?

18 MR. LEVETO: No.

19 THE COURT: Dr. Leveto says no.

20 Okay. Thank you.

21 (The juror left sidebar.)

22 (The juror came to sidebar.)

23 THE JUROR: Julie Prody.

24 THE COURT: Spell your last name.

25 THE JUROR: P-r-o-d-y.

41

1 THE COURT: Julie Prody. And your number?

2 THE JUROR: 263. I go to court quite often to

3 testify for the county for contraband, or anything like that,

4 brought into the prison. Okay?

5 THE COURT: Don't go yet.

6 THE JUROR: Okay.

7 THE COURT: Well, I mean, you're in criminal law

8 enforcement. Again, I will ask you that question.

9 Is there anything about your job that makes you

10 feel you couldn't be fair and impartial here?

11 THE JUROR: No, sir.

12 THE COURT: Any questions of Miss Prody? Okay.

13 Thank you.

14 (The juror left sidebar.)

15 (The juror came to sidebar.)

16 THE COURT: Could you give me your name and number?

17 THE JUROR: Number 138. Tom Matson.

18 THE COURT: M-a-t-s-o-n?

19 THE JUROR: Correct.

20 THE COURT: Okay.

21 THE JUROR: I had tools stolen out of my garage.

22 My daughter had a stereo stolen out of her car. And my other

23 daughter was raped three years ago.

24 THE COURT: Did they get legal action or court

25 proceedings out of any of those situations?

42

1 THE JUROR: No.

2 THE COURT: They never got the person that raped

3 your daughter?

4 THE JUROR: It was his word against hers.

5 THE COURT: So, is there anything about those

6 experiences that might make you feel you couldn't be a fair

7 and impartial juror?

8 THE JUROR: No.

9 MR. VORACEK: Is there any dissatisfaction that you

10 may have with the law enforcement community with regard to

11 your daughter's situation that would cause you not to be

12 completely fair and impartial to the government?

13 THE JUROR: No, I don't think so.

14 MR. VORACEK: Thank you.

15 (The juror left sidebar.)

16 (In open court.)

17 THE COURT: Let me see my next question. It might

18 all be personal.

19 I think we've probably covered this next question

20 in my conversations with various people that came up here,

21 but if you didn't come up and this question applies to you,

22 why, put your hand up.

23 This question is:

24 Have you or a member of your immediate family

25 participated in a criminal case as a defendant or witness for

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1 the defense or in some other capacity?

2 It's slightly different than the ones I asked

3 before, but I think a lot of people gave me the answers to

4 both questions when they were up here. Yes, sir.

5 THE JUROR: I was the defendant in an EEO complaint  
6 in Federal Court.

7 THE COURT: Name and number.

8 THE JUROR: Juror 240. Frank Fath. F-a-t-h. I  
9 was a defendant in an EEO case in Federal Court in Atlanta.

10 THE COURT: Is there anything about that experience  
11 that would make you feel you couldn't be a fair and impartial  
12 juror here?

13 THE JUROR: No, sir, not at all.

14 THE COURT: Thank you. Okay.

15 MR. VORACEK: I have another question that I  
16 noticed was not on your list and I was wondering if I could  
17 submit it for your consideration.

18 THE COURT: What?

19 MR. VORACEK: It's more of a personal nature,  
20 that's why I bring it up at this time. I know that the Court  
21 has inquired about the people's feelings toward the Internal  
22 Revenue Service, but I was wondering if the Court could also  
23 ask if they have ever been audited, because if they have,  
24 they may have some feelings inside about the tax --

25 THE COURT: Okay. Now, usually some hands go up

1 on this one, but you can just answer it from where you are if

2 your answer is yes.

3 Have you ever be on a jury before? Lots of lucky

4 people here.

5 Well, what I am going to do is just ask you to

6 stand and give your -- each time you have to give your name

7 and number. Even though you might have done that before, you

8 have to give your name and number and then just tell us where

9 and what kind of a case it was, and tell me whether or not

10 that would make you feel that you couldn't be a fair and

11 impartial juror in this case.

12 So, we will start in the front row.

13 THE JUROR: Jim Harvey, 255. I have been a juror

14 several times.

15 THE COURT: In Erie County?

16 THE JUROR: Erie County.

17 THE COURT: Do you remember what kind of cases?

18 THE JUROR: Criminal case, terroristic threats

19 case, just a lot of that kind of things.

20 THE COURT: You're a professional?

21 THE JUROR: I'm not trying to be.

22 THE COURT: Anything about those experiences that  
23 would make you feel you couldn't be a fair and impartial  
24 juror?

25 THE JUROR: Not at all.

45

1 THE COURT: Somebody else.

2 THE JUROR: Rebecca Dilley, 223. Venango County  
3 Court, DUI and assault with a deadly weapon, and assault.

4 THE COURT: Any of those experiences make you feel  
5 you couldn't be fair and impartial here?

6 THE JUROR: No.

7 THE COURT: Anybody else?

8 THE JUROR: Vickie Thompson, juror No. 161. I was  
9 selected to be a juror in McKean County. This was probably  
10 fifteen years ago. Statutory rape case. They ended up  
11 settling out of court.

12 THE COURT: So, you never participated in a trial?

13 THE JUROR: No. But, I was selected.

14 THE COURT: Back here.



15 THE JUROR: John Hackenberg, 166. Erie County

16 Court. It was a case involving the police and the black

17 ministers maybe seven or eight years ago.

18 THE COURT: Was it a civil rights type case?

19 THE JUROR: Yes.

20 THE COURT: Anything about that experience --

21 THE JUROR: No.

22 THE COURT: -- that would make you feel you

23 couldn't be fair and impartial?

24 THE JUROR: No.

25 THE COURT: Thanks.

46

1 THE JUROR: Gail Kurdas, 211. It was, like, a

2 medical malpractice suit, but it was settled out of court. I

3 was picked, but I didn't get --

4 THE COURT: That was in Erie?

5 THE JUROR: Erie County. Yes.

6 THE COURT: And anything about that experience that

7 would make you feel you couldn't be fair and impartial?

8 THE JUROR: No.

9 THE COURT: Back there.

10 THE JUROR: Nadena Owens, 127. Both times were in  
11 Crawford County. One case was a DUI. The other case was a  
12 medical malpractice.

13 THE COURT: Either of those situations make you  
14 feel you couldn't be fair and impartial here?

15 THE JUROR: No.

16 THE COURT: Yes, sir.

17 THE JUROR: Thomas Gregorchik, 167. New York  
18 State. I was on a vehicular homicide jury which was  
19 resolved. In New Jersey, I was in an assault and battery  
20 case, and in Pennsylvania here, it was medical malpractice.

21 THE COURT: Well, you're an experienced juror then.

22 Is there anything about those experiences that  
23 would make you feel you couldn't be fair and impartial here?

24 THE JUROR: No.

25 THE COURT: Yes, sir.

1 THE JUROR: Daniel Bennett, 162. It was assault  
2 and retail theft in Erie County Court.

3 THE COURT: Anything about that experience that

4 would make you feel you couldn't be fair and impartial?

5 THE JUROR: No.

6 THE COURT: Anybody else in the front row?

7 THE JUROR: Dan Noble, juror 221. Wrongful

8 employee termination case.

9 THE COURT: Was that in Erie County?

10 THE JUROR: Erie County, yes.

11 THE COURT: Was it in Federal Court or Erie County

12 Court?

13 THE JUROR: Erie County.

14 THE COURT: Anything about that experience that

15 would make you feel you couldn't be fair and impartial?

16 THE JUROR: No, sir.

17 THE COURT: Thank you. Second row. Yes, sir.

18 THE JUROR: Frank Fath, F-a-t-h, juror 240. I was

19 on a jury on welfare fraud in Cobb County, Georgia.

20 THE COURT: Anything about that experience that

21 would make you feel you couldn't be fair and impartial?

22 THE JUROR: No, sir.

23 THE COURT: Thank you. Yes.

24 THE JUROR: 205, Brenda Allen. Twice in Crawford

25 County; once for assault and once for burglary.

1 THE COURT: Anything about those experiences that  
2 would make you feel you couldn't be fair and impartial?

3 THE JUROR: No.

4 THE JUROR: Janice Nikolishen, juror number 248.  
5 It was assault and battery in Erie County Court.

6 THE COURT: Same question. Anything about that  
7 experience that would make you feel you couldn't be fair and  
8 impartial here in this case?

9 THE JUROR: No.

10 THE COURT: Anybody else in that row?

11 THE JUROR: Colette Barnett, Venango County.

12 THE COURT: Your juror number?

13 THE JUROR: 264. Just a domestic dispute.

14 THE COURT: Okay. Anything about that that would  
15 make you feel you couldn't be fair and impartial?

16 THE JUROR: No.

17 THE COURT: Thank you. Next row.

18 THE JUROR: Kathy Ulbrich, No. 152. Erie County.  
19 It was a PFA.

20 THE COURT: Anything that would make you feel you

21 couldn't be fair and impartial in this case?

22 THE JUROR: No.

23 THE COURT: Thank you.

24 THE JUROR: Lucille Grabofski, 232. Attempted

25 rape, use of alcohol and drugs.

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1 THE COURT: Anything about that experience that

2 would make you feel you couldn't be fair and impartial?

3 THE JUROR: No.

4 THE COURT: Thank you.

5 THE JUROR: Mary Groshner, 172. Crawford County,

6 DUI.

7 THE COURT: Okay. And was there anything in that

8 case that would make you feel you couldn't be fair and

9 impartial here?

10 THE JUROR: No.

11 THE COURT: Yes, ma'am.

12 THE JUROR: Karen Gray, 180. Warren County, DUI,

13 and no.

14 THE COURT: Okay. Thank you. Anyone else? How

15 about over here? Yes, sir.

16 THE JUROR: Your 200, Duane Kemling. Erie County

17 courthouse, two murder cases.

18 THE COURT: Either of those cause you to feel you

19 couldn't be fair and impartial here?

20 THE JUROR: No.

21 THE COURT: Yes, sir.

22 THE JUROR: Don Kirsch, 156. Two in Erie County.

23 One was a drug case and the other one was a burglary.

24 THE COURT: Anything about those cases that would

25 make you feel you couldn't be fair and impartial?

50

1 THE JUROR: No.

2 THE COURT: Thank you.

3 THE JUROR: Kathy Bemere, No. 219. Erie County,

4 possession of drugs.

5 THE COURT: How long ago was that?

6 THE JUROR: About twelve years.

7 THE COURT: Anything about that experience that

8 would make you feel you couldn't be fair and impartial?

9 THE JUROR: No, sir.

10 THE JUROR: Jim Preshak, 239. Two cases in Elk  
11 County. One theft case and one rape case.

12 THE COURT: Anything about either of those cases  
13 that would cause you to feel you couldn't be fair and  
14 impartial here?

15 THE JUROR: No.

16 THE COURT: Okay. Have you ever been audited by  
17 the Internal Revenue Service, have your income tax audited or  
18 your tax returns audited? That's anybody.

19 From your own personal knowledge, based on what  
20 little I've told you about this case, do you know anything  
21 about the facts of this case?

22 Yes. Did we talk about that at sidebar?

23 THE JUROR: Basically.

24 THE COURT: Why don't you come on up?

25 (The juror came to sidebar.)

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1 THE COURT: Okay. You want to give us your name  
2 and number again?

3 THE JUROR: Denise Powell. 245.

4           My understanding is, you want to know what I know  
5 about it?

6           THE COURT: Yes.

7           THE JUROR: I knew he was a vet and at some point  
8 in time he falsified his records, according to the publicity,  
9 and then he disappeared for a while and then he came back and  
10 now he's here.

11          THE COURT: I think the question here is --

12          THE JUROR: Inside knowledge?

13          THE COURT: No. Can you put all that aside? I  
14 mean, when he enters the courtroom, he's --

15          THE JUROR: Presumed --

16          THE COURT: -- cloaked in the presumption of  
17 innocence, as they say.

18          THE JUROR: Right.

19          THE COURT: Now can you, despite what you read in  
20 the paper, can you put those reports out of your mind?

21          THE JUROR: Yes.

22          THE COURT: And consider him to be innocent  
23 until --

24          THE JUROR: Until I see proof of it, yeah, he's --



25 THE COURT: Do you have any questions of

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1 Miss Powell?

2 MR. VORACEK: No.

3 MS. CALVIN: No.

4 MR. LEVETO: No.

5 THE COURT: Thank you.

6 (The juror left sidebar.)

7 (End of sidebar.)

8 MR. VORACEK: Your Honor, I think there is another  
9 hand.

10 THE COURT: Yes, sir.

11 THE JUROR: I had the sidebar, which would indicate  
12 family relationship. No new --

13 THE COURT: I think that's all right.

14 Give us your name and number again, Mr. Fath.

15 THE JUROR: 240, Frank Fath. F-a-t-h.

16 THE COURT: Some of you have already told me this,  
17 but I am going to ask the question just to make sure we  
18 covered everybody.

19 Do you remember having read or heard about this

20 case? If you already told me about it, don't tell me again.

21 Did we talk about that at sidebar, Mr. Fath?

22 THE JUROR: I am not sure whether we did or not.

23 THE COURT: I think we better talk about this at

24 sidebar. And I see a hand back there, too. Why don't you

25 come on up?

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1 (The juror came to sidebar.)

2 THE COURT: Wait until I find you on here. Okay.

3 THE JUROR: I know the -- the Morandini(Sp) family

4 very well and we've talked back and forth about the case.

5 THE COURT: You've heard things about the specific

6 charges?

7 THE JUROR: Yes, I have.

8 THE COURT: Is there anything that you have heard

9 that you could put out of your mind, either one way or the

10 other, as we say, that he enters the courtroom, he's charged,

11 but he's got the presumption of innocence and it's up to the

12 government to prove otherwise.

13 Can you accept that instruction?

14 THE JUROR: Yes, sir, I could.

15 THE COURT: And give him a clean slate before you  
16 decide?

17 THE JUROR: I believe I could, yes, sir.

18 THE COURT: Any questions? Thank you.

19 (The juror left sidebar.)

20 THE COURT: We had this fellow up here before, too.

21 (The juror came to sidebar.)

22 THE COURT: Name and number.

23 THE JUROR: Charles McErlane, juror 192, Your

24 Honor. I am excused.

25 THE COURT: Just don't talk to anyone else about

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1 what you might know. Yes, you have been excused before.

2 (The juror left sidebar.)

3 (The juror came to sidebar.)

4 THE COURT: Give us your name and number.

5 THE COURT: Diane Minman, 188. And I think we

6 already discussed that I had read details in the paper, you

7 know, and as things go on, I may remember more and more about

8 the details.

9 THE COURT: Yeah. And I think the important thing,  
10 the point we would have to make with you is, that when he  
11 enters the courtroom and the case begins, he's presumed to be  
12 innocent.

13 THE JUROR: Correct.

14 THE COURT: And you put anything you might have  
15 read or heard outside the courtroom out of your mind and just  
16 base any decision you make only on evidence or testimony that  
17 you hear in here. Do you think you can do that?

18 THE JUROR: I believe I can, yes.

19 THE COURT: Any questions of Miss Minman?

20 MS. CALVIN: No.

21 MR. VORACEK: No.

22 THE COURT: Thanks.

23 (The juror left sidebar.)

24 (In open court.)

25 THE COURT: Have you an opinion at this time as to

1 the guilt or innocence of the defendant on any of the charges  
2 contained in the indictment, or have you ever expressed an

3 opinion as to the guilt or innocence of the defendant?

4 Has anyone talked to you about this case?

5 If you are selected to sit on this case, can you

6 think of any reason that you would be unable or unwilling to

7 render a verdict solely on the evidence presented at the

8 trial and on the law as I give it to you in my instructions,

9 disregarding any other ideas, notions or beliefs about the

10 law that you may have encountered?

11 And that's a very important question.

12 If you were selected to sit on this case, can you

13 think of any reason that you would be unable or unwilling to

14 render a verdict solely on the evidence presented at the

15 trial and on the law as I give it to you in my instructions,

16 disregarding any other ideas, notions or beliefs about the

17 law that you may have encountered?

18 Do you know of any reason that you may be

19 prejudiced for or against the government or for or against

20 the defendant because of the nature of the charges or

21 otherwise?

22 Yes, sir. Do you want to come on up here?

23 (The juror came to sidebar.)

24 THE COURT: Name and number.

25 THE JUROR: Richard Taylor, 128.

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1 THE COURT: T-a-y-l-o-r?

2 THE JUROR: Right.

3 THE COURT: Okay.

4 THE JUROR: Okay. When I was ten years old, my

5 stepfather at that time was accused of tax fraud and, as a

6 result, he committed suicide, so --

7 THE COURT: You feel that that's --

8 THE JUROR: Actually, no, I don't, one way or the

9 other. I just feel it's my duty to inform you of that.

10 THE COURT: How long ago was that?

11 THE JUROR: 1984.

12 THE COURT: And that was -- was there any criminal

13 charge brought?

14 THE JUROR: Well, he committed suicide so that was

15 the end of the proceedings, I guess.

16 THE COURT: Would you like to be excused from this

17 jury?

18 THE JUROR: Actually, I can -- like I said, it

19 doesn't really impact me, one way or the other.

20 THE COURT: Does the government have any questions  
21 of Mr. Taylor?

22 MR. VORACEK: The episode that you just described,  
23 does that cause you to have some strong feelings regarding  
24 the enforcement of tax laws in this country because of the  
25 situation you encountered?

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1 THE JUROR: Not really. Because, I mean, I was ten  
2 years old. So, I mean, I wasn't involved in all the facts.  
3 But, from what I understand, he cheated on his taxes and that  
4 was the -- the IRS investigated him.

5 MR. VORACEK: Was there anything about the IRS  
6 investigation, the government agents, or anything that you  
7 had heard about at the time, that may cause you to find their  
8 testimony either favorable or unfavorable if they took the  
9 stand?

10 THE JUROR: Not really. Because what I just  
11 described to you was pretty much all the knowledge that I  
12 had. I was ten years old so I really wasn't involved in it.  
13 It was my stepfather. I don't really know much about the

14 situation.

15 MR. VORACEK: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (The juror left sidebar.)

18 (End of sidebar.)

19 THE COURT: That last question was:

20 Do you know of any reason you may be prejudiced for

21 or against the government, or for or against the defendant

22 because of the nature of the charges or otherwise?

23 As you know by now, this case involves alleged

24 violations of federal income tax laws.

25 Is there any reason that you can't accept and

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1 follow my instructions on federal income tax laws even if you

2 don't agree with that law?

3 The defendant in this case has elected to represent

4 himself. Considering this fact, do you feel that you would

5 view his case more favorably?

6 Considering this fact, do you feel that you would

7 view this case less favorably?



8 Are you more likely to believe the testimony of a  
9 law enforcement officer as opposed to the testimony of other  
10 witnesses simply because he or she is employed in a law  
11 enforcement capacity?

12 Are you less likely to believe the testimony of a  
13 law enforcement officer as opposed to the testimony of any  
14 other witness simply because he or she is employed in a law  
15 enforcement capacity?

16 Are you inclined to give any less credibility to a  
17 defendant if he testifies than to any other witnesses simply  
18 because he is the defendant?

19 This is a question that you'll be welcome to come  
20 up to sidebar to answer.

21 Do you have feelings or beliefs about the.  
22 United States Government, the criminal justice system or the  
23 prosecution of criminal cases that would affect your ability  
24 to render a fair and impartial verdict in this case?

25 Do you have any health, hearing or vision

1 impairment, or is there any reason, personal, business,  
2 health or otherwise, that would prevent you from serving as a

3 fair and impartial juror and from rendering a fair and  
4 impartial verdict in this case based on the evidence  
5 presented in court and the Court's instructions to you  
6 concerning the law?

7 Okay. Those are the questions I think we better  
8 answer up here.

9 (The juror came to sidebar.)

10 THE COURT: Yes, sir. Name and number.

11 THE JUROR: Dan Bennet, 162. As I stated before, I  
12 was --

13 THE COURT: Not too loud.

14 THE JUROR: As I stated before, I was on a couple  
15 of juries, but at this time financially, I cannot take off  
16 work again. I am not getting paid for today. And the longer  
17 I am here -- I am the primary source of income for my family.

18 THE COURT: Where do you live?

19 THE JUROR: Albion.

20 THE COURT: So, \$40.00 a day doesn't do it?

21 THE JUROR: That is not going to do it for me, no.

22 THE COURT: I think that is a good reason to be  
23 excused, and we got plenty of jurors here, so we will excuse

24 you. I am going to ask you to go back to your seat until

25 later in the -- later in this session.

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1 (The juror left sidebar.)

2 (The juror came to sidebar.)

3 THE COURT: Name and number.

4 THE JUROR: Steven Woodard, No. 212.

5 THE COURT: Spell your last name.

6 THE JUROR: W-o-o-d-a-r-d. Financially, I was

7 excused twice before because I'm in a new job that I have

8 only been with two years and I don't get time off or paid for

9 time I am not at work. I was excused twice before.

10 THE COURT: You don't have a union contract that

11 says they got to pay you the difference?

12 THE JUROR: No. The last company I worked for did,

13 but this one we don't. So, I was excused twice before

14 through letters, but --

15 THE COURT: From this Court?

16 THE JUROR: Yeah. Then the clerk advised me to

17 come in and come forward.

18 THE COURT: Okay. Well, as I said, I think we have

19 plenty of jurors here and that's a good excuse.

20 THE JUROR: Okay.

21 THE COURT: I am going to ask you to go back to  
22 your seat though and then we'll excuse you a little bit later  
23 on.

24 THE JUROR: Okay.

25 (The juror left sidebar.)

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1 (The juror came to sidebar.)

2 THE COURT: Name and number.

3 THE JUROR: Mike Ginkel, 195.

4 THE COURT: Last name is spelled?

5 THE JUROR: G-i-n-k-e-l.

6 THE COURT: Okay.

7 THE JUROR: I lose too much money to be away from  
8 work. I can't -- I pay child support and I can't do it and I  
9 resent the fact that I'm even here.

10 THE COURT: You're not a part of any union that has  
11 a contract that pays you the difference?

12 THE JUROR: No. I normally work twelve hours a day

13 and I only get paid for eight.

14 THE COURT: I think we will go ahead and excuse  
15 you. I will ask you to go back and take your seat though.

16 THE JUROR: Thank you.

17 (The juror left sidebar.)

18 (The juror came to sidebar.

19 THE COURT: Name and number.

20 THE JUROR: Dave Wolfgang, 197.

21 THE COURT: W-o-l-f-g-a-n-g?

22 THE JUROR: Right. My company sent a letter that  
23 says that they are just breaking a run ready mix out of  
24 Warren and they can't spare me.

25 THE COURT: You mean you drive a ready mix truck?

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1 THE JUROR: I drive truck and they wrote a letter  
2 stating that as busy as they are --

3 THE COURT: Do they pay you anyway?

4 THE JUROR: No, I don't think.

5 THE COURT: You have not had this experience  
6 before?

7 THE JUROR: No.

8 THE COURT: Any questions of this gentleman?

9 Okay, Mr. Wolfgang, we'll go ahead and excuse you.

10 I'll ask you to go back to your seat for now.

11 THE JUROR: Okay. Thank you.

12 (The juror left sidebar.)

13 (The juror came to sidebar.)

14 THE COURT: Name and number?

15 THE JUROR: Juror 200, Duane Kemling. This is one

16 of the prior ones about the police officers. I was an

17 officer myself, and my kids are both officers, and I would,

18 maybe, tend to believe them more than, you know --

19 THE COURT: Of course, this isn't really a police

20 officer type case.

21 THE JUROR: I know that, but you asked that

22 question earlier and I didn't put my hand up. So, rather

23 than doubt it --

24 THE COURT: Spell your last name.

25 THE JUROR: K-e-m-l-i-n-g.

1 THE COURT: I think the important question here is,

2 you know, we ask all of our jurors to put aside any possible  
3 prejudice they might have, one way or the other, and we  
4 remind them that when a defendant comes in here, he's  
5 presumed to be innocent, and I'm sure you law enforcement  
6 people all know that.

7 And the question is: Can you follow that  
8 instruction that he's presumed innocent and it is up to the  
9 government to prove otherwise?

10 THE JUROR: Probably. But, I would still -- you  
11 know, I would be leaning towards the other side which has  
12 nothing to do with this case, but --

13 THE COURT: Okay. Thank you.

14 (The juror left sidebar.)

15 THE COURT: Hold it, Rich.

16 That sounded like an afterthought to get out of  
17 jury duty to me, but --

18 Excuse me just a minute. Hold it, Rich. I wanted  
19 to talk about the last situation. I am sorry. Anybody have  
20 any questions?

21 MR. VORACEK: Your Honor, I think if he just  
22 indicated, though, that he may give more credence to a law  
23 enforcement person if they testify, since he said that, I

24 don't think we have much choice here.

25 THE COURT: I think so. All right. Okay, Rich.

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1 (The juror came to sidebar.)

2 THE COURT: Name and number.

3 THE JUROR: 175, Dale Wehler.

4 Over the last couple of years --

5 THE COURT: W-h --

6 THE JUROR: W-e-h-l-e-r.

7 THE COURT: Okay.

8 THE JUROR: In the last year, year and a half,

9 accounting practices, there was a lot of issues at my

10 company, there was an investigation, inappropriate accounting

11 practices.

12 THE COURT: What's your company?

13 THE JUROR: Metaldyne. That's a Detroit-based

14 company. There is a lot of allegations in regards to

15 accounting practices and several people have lost their

16 employment. I am not sure how partial or impartial I could

17 be with regard to that.



18 THE COURT: What's your job there?

19 THE JUROR: Operations manager. So, I was  
20 concerned about that also there are allegations coming on  
21 information being that -- trade secrets being shared with  
22 other people.

23 So, I don't know how much that would influence me.  
24 I just wanted to be fair.

25 THE COURT: I appreciate your frankness.

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1 I think the big question here is, would you be able  
2 to follow my instructions that when a person comes in here  
3 accused of a crime, he's still presumed innocent until the  
4 government is able to prove beyond a reasonable doubt that he  
5 is not innocent?

6 THE JUROR: Yeah, I guess that's the bottom line.

7 THE COURT: I think we ought to hold you in here.

8 THE JUROR: All right. That is fine.

9 MR. VORACEK: The allegations that are being made,  
10 are they being made by a particular agency?

11 THE JUROR: They were audited on financial  
12 reporting in the first event.

13 THE COURT: That would be like the SEC or IRS?

14 THE JUROR: Yes. SEC. And then in the second  
15 instance, it's our company out of -- alleging that someone as  
16 a past employee did some things in regards to trade secrets.

17 MR. VORACEK: Is there anything about your  
18 involvement with the agents, the federal agents involved,  
19 that would cause you to view their testimony more or less  
20 favorable?

21 THE JUROR: No. No, I guess not.

22 MR. VORACEK: You could still view their testimony  
23 from the witness stand as an objective individual based on  
24 everything that you see about the witnesses coming in here,  
25 rather than any preconceived notion that you may have?

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1 THE JUROR: That is the part that maybe I'm a  
2 little bit concerned about. But, I can work through that, I  
3 guess, if the issue ever came up.

4 THE COURT: I appreciate your frankness. Rather  
5 have it come up than not. Okay. Thanks.  
6 (The juror left sidebar.)

7 (The juror came to sidebar.)

8 THE JUROR: 241, Patricia Drabina.

9 THE COURT: Spell your last name.

10 THE JUROR: D-r-a-b-i-n-a.

11 It would just be difficult for me to be involved  
12 for any length of time. I watch my granddaughter. My  
13 son-in-law had to take work off today, and they told me I  
14 have to tell you this. It's just me. I am the caretaker of  
15 my granddaughter.

16 THE COURT: Where do you live?

17 THE JUROR: I live on 33rd and Wayne here in Erie.

18 THE COURT: I really don't know how long this trial  
19 is going to last; probably last this week. You couldn't take  
20 off -- we won't be trying Friday and, of course, Monday is a  
21 holiday. That will be four days this week.

22 THE JUROR: I just thought I ought to tell you  
23 that. He is taking off work for today. It would be  
24 difficult for them to find somebody to watch --

25 THE COURT: I am going to have to hold off on

1 making a decision to excuse you.

2 THE COURT: Okay.

3 (The juror left sidebar.)

4 (The juror came to sidebar.)

5 THE COURT: Name and number.

6 THE JUROR: Joyce Singer.

7 THE COURT: Spell your last name.

8 THE JUROR: S-i-n-g-e-r.

9 THE COURT: Your number.

10 THE JUROR: 191. My daughter is having surgery and  
11 she has five children.

12 THE COURT: When is that scheduled?

13 THE JUROR: In a couple weeks.

14 The youngest one is a year old.

15 THE COURT: Are you the baby-sitter?

16 THE JUROR: Yes.

17 THE COURT: She can't handle the children?

18 THE JUROR: Right.

19 THE COURT: Okay. I think under the circumstances,  
20 we better excuse you. Okay. Just go back and take your seat  
21 for now though.

22 THE JUROR: Thank you.

23 (The juror left sidebar.)

24 (The juror came to sidebar.)

25 THE COURT: Name and number, please.

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1 THE JUROR: 183, Helen Krug.

2 THE COURT: Spell your last name.

3 THE JUROR: K-r-u-g.

4 I work in a Catholic elementary school cafeteria as

5 a cook there and I only work part time, but it is hard for me

6 to be off of work. I don't drive. I don't drive out of

7 town. My husband --

8 THE COURT: Where do you live? Here in Erie?

9 THE JUROR: No. St. Mary's, Pennsylvania. And I

10 just -- My husband had to take off to get me here. I don't

11 drive.

12 THE COURT: How far is that?

13 THE JUROR: It's about two and a half hours from

14 here.

15 THE COURT: So, that's more than fifty miles?

16 THE JUROR: Yes.

17 THE COURT: You would be able to stay here, you

18 know, at government expense.

19 THE JUROR: But, I would have no one to bring me.

20 I don't drive. I was in an accident a couple years ago and I

21 am scared to death to drive.

22 THE COURT: Well, we'll have to think about you. I

23 think -- do you have any questions of Miss Krug?

24 MR. VORACEK: No, Your Honor.

25 THE COURT: Okay. Thanks.

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1 (The juror left sidebar.)

2 (The juror came to sidebar.)

3 THE COURT: Name and number.

4 THE JUROR: Dan Noble, 221.

5 THE COURT: Spell your last name.

6 THE JUROR: N-o-b-l-e.

7 THE JUROR: Two issues I have. One is, I wear a

8 hearing aid, but it doesn't seem to be a problem.

9 Two is, my wife works and I am the primary

10 caregiver to my father, who is elderly, and he is just

11 recuperating from boil surgery. He lives with us and he is

12 supposed to be home from the hospital today. I need to be

13 there at this time to get him around the house and bath him

14 and give him his meds.

15 THE COURT: If we run short of jurors, we might

16 have to hold you in. But, we will try to excuse you, but I

17 can't promise anything at this point.

18 (The juror left sidebar.)

19 (The juror came to sidebar.)

20 THE JUROR: 152, Kathy Ulbrich.

21 THE COURT: Spell your last name.

22 THE JUROR: It's U-l-b-r-i-c-h.

23 THE COURT: Okay.

24 THE JUROR: I am recently recovering from a head

25 injury and I get occasional headaches, which is one starting

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1 about now.

2 THE COURT: I hope I didn't give it to you.

3 THE JUROR: No, you didn't give it to me.

4 THE COURT: Okay.

5 THE JUROR: And I have a doctor's appointment for

6 this injury tomorrow morning.

7 THE COURT: I think we better excuse you under  
8 these circumstances. Thanks. Okay.

9 (The juror left sidebar.)

10 (In open court.)

11 THE COURT: Can you think of any other matter which  
12 you should call to my attention that may have some bearing on  
13 your qualifications as a juror, or that may prevent you from  
14 reaching a fair and impartial verdict based solely on the  
15 evidence and on my instructions as to the law?

16 Okay. Now I want to talk to the lawyers again at  
17 sidebar, and Mr. Leveto at sidebar, please, and, Rich, bring  
18 your list up and let's make sure.

19 (Sidebar discussion.)

20 THE COURT: Okay. What's going to happen next is,  
21 I'll pass out those questionnaires to the jurors that are,  
22 you know, the final -- in the final cut, and they will answer  
23 those questions.

24 But, there are rarely challenges for cause that  
25 come up as a result of their answers to those questions so I



1 thought right now I had excused ones that we agreed could be

2 excused or that I ruled could be excused.

3 But, my question is: Are there any that anybody

4 wants excused that we haven't talked about?

5 MS. CALVIN: Can we have a minute, Your Honor?

6 THE COURT: Here, let me turn it around. I will

7 tell you the ones that I have got marked as being excused and

8 the ones I have marked as questionable.

9 Charles McErlane, 192. That is the very first one

10 we had. He's excused.

11 Then Denise Powell. She's sitting, I think, in

12 juror No. 2 seat. She is the one that knows -- she thought

13 she might know his daughter, but she is the bookkeeper, and

14 so on. She is a teacher, right? I thought she was

15 questionable.

16 MS. CALVIN: Okay for the government.

17 THE COURT: Do you got any problem with Denise

18 Powell?

19 MR. LEVETO: Yes, I do. I really need an attorney

20 to help me out here.

21 THE COURT: Okay. She's excused.

22 Then the ones -- that parade of people that had

23 financial difficulty, I got 160 -- 162, Dan Bennett, excused.  
24 212, Steven Woodard, excused. Mike Ginkel, G-i-n-k-e-l,  
25 excused, No. 195. 197, Dave Wolfgang, got a money excuse.

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1 Duane Kemling, K-e-m-l-i-n-g, 200, I got him excused and I  
2 forget why.

3 MS. CALVIN: I think he had a family in law  
4 enforcement and he couldn't be impartial --

5 THE COURT: Yes. Then this Dave Wehler,  
6 W-e-h-l-e-r, 175, is the one whose company has been evaluated  
7 by SEC apparently for having -- and apparently having tax  
8 troubles, too. He is a reluctant juror certainly. I don't  
9 know -- any problem with excusing him?

10 MR. VORACEK: None from the government, Your Honor.

11 MS. CALVIN: No.

12 MR. VORACEK: What number was that?

13 THE COURT: 175. And Patricia Drabina. She is the  
14 one that got baby-sitter problems. My preference usually is  
15 to excuse those people if they are having problems like that,  
16 especially when we have plenty of jurors here, because their

17 mind is not going to be on the trial. It is going to be on

18 something else. Okay?

19 MR. VORACEK: That is fine.

20 THE COURT: Excuse 241. And then Joyce Singer,

21 191. She is the one whose daughter is looking at surgery. I

22 would say excuse her.

23 Helen Krug is the one from St. Mary's. She doesn't

24 drive. She wants to be excused.

25 MR. WITAS: (The clerk) What number is she?

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1 THE COURT: 183. And then Dan Noble is the one

2 whose father got the boil problem, surgery. Excuse him?

3 MR. VORACEK: What is his number?

4 THE COURT: 221.

5 And 152 is Kathy Ulbrich. She is the one that just

6 had the head injury. I'm going to excuse her.

7 MR. WITAS: (The clerk) What's her number?

8 THE COURT: 152. Okay.

9 Now, I think what we'll do, I'll have Rich excuse

10 these people, we'll put the replacements into their --

11 MR. LEVETO: There is another page.

12 THE COURT: I thought everybody had the --  
13 You get ten peremptory challenges later on. This  
14 is cause. Peremptories are for no reason. Okay. Any  
15 challenges? I mean we, still got an option when we hear what  
16 their answers to those questions are, but I want to get the  
17 excuses out of here now and get everybody in place again.  
18 Then we'll take a bathroom break and then we'll have you  
19 choose your jury. Okay?

20 MR. VORACEK: We're fine.

21 THE COURT: Are you okay, Mr. Misko and Mr. Leveto?

22 MR. MISKO: Yes, Your Honor.

23 THE COURT: Okay. Rich, do you think you have it?

24 MR. WITAS: (Judge's Clerk) No.

25 THE COURT: Do you want to --

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1 MR. WITAS: (Judge's Clerk) I've got -- out of the  
2 original thirty-two people, okay, I have got five people that  
3 I need to replace.

4 Now, does anybody disagree with that? I can tell  
5 you the ones that are going to go, the ones that I have.

6 Juror No. 2, Denise Powell, she is gone. And juror No. 16,  
7 Stephen Woodard, he is going to be gone. And then No. 17,  
8 Daniel Bennett, he needs to be replaced. I have juror  
9 No. 221, Daniel Noble, he is going to go. And the last one I  
10 have is juror No. 152, Kathy Ulbrich.

11 Those are the five people that I need to replace.

12 THE COURT: Then I will keep an eye on them.

13 MR. WITAS: (Judge's Clerk) If there is anyone  
14 else that I missed, you got to let me know.

15 THE COURT: He ought to be able to pick it up.

16 THE MR. WITAS: (The clerk) Those five people will  
17 be replaced right now.

18 MR. MISKO: How many jurors will we need?

19 MR. WITAS: (The clerk) We have a total of  
20 thirty-two. On your list when I replace them, you will end  
21 up with thirty-two.

22 THE COURT: That's sixteen peremptories, twelve  
23 jurors and two alternates.

24 MR. WITAS: (Judge's Clerk) Two alternates.

25 MR. LEVETO: I would like to ask you again that if

1 I could have counsel appointed for me?

2 THE COURT: You already asked me and that's been  
3 denied. That's the law of the case, so don't bother asking  
4 me again.

5 MR. LEVETO: Okay.

6 (End of sidebar.)

7 THE COURT: Okay. At this point, we still have a  
8 little -- I will tell you what we are doing now. We are  
9 going to excuse the ones that we have decided to excuse at  
10 this point.

11 Then there will be some other jurors that are  
12 filling in some of these vacancies, then we'll take a break.  
13 If anybody really needs to go to the restroom now, why, we  
14 will let you, but please come back to this courtroom.

15 Anybody that just has to be excused now? This is just going  
16 to be a few more minutes. Okay. All right.

17 We'll have Mr. Witas here read the ones that are to  
18 be excused that are out of these early seats. Okay.

19 MR. WITAS: (The clerk) I need the following  
20 people as I call your numbers to step down and take a seat in  
21 the back, please:

22 Juror No. 245, juror No. 212, juror No. 162, juror

23 No. 221, and juror No. 152.

24 Now, the following people, as I call your names,

25 please come up and take the seats that are assigned to you:

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1 Seat No. 7, Laurie Bilich, seat No. 17.

2 Juror No. 16 is going to be James Preshak.

3 P-r-e-s-h-a-k. No. 16. Right here, sir.

4 Juror No. 232, take the last seat over here,

5 please.

6 Juror No. 180, take seat No. 20, please. And juror

7 No 170, come up and take seat No. 2, please.

8 THE COURT: The ones that have just been -- the

9 four or five of you that are standing back there, you folks

10 see Mr. Witas out here in the hallway, please, and, Nancy,

11 will you pass out those questionnaires to the jurors?

12 This is a time saver. These are sort of the final

13 questions in this session. And now each of you have a

14 question sheet in front of you. And one at a time, we are

15 going to ask you to stand, give your juror number and then

16 just go down the list and answer these questions.

17 Everybody have their question sheet?

18 THE COURT: Okay. Start with juror number one.

19 Would you stand, give us your name and number and then just

20 go down that list of questions?

21 THE JUROR: Thomas J. Matson, juror No. 138. I

22 live in the City of Erie in Erie County. I have lived here

23 for fifty-four years. Lived in Pennsylvania for fifty-four

24 years. I have a Master's Degree engineering. I'm a product

25 manager for modernization on locomotives.

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1 I'm married, have three children, age twenty-six,

2 twenty-four and twenty-one. I have a lawyer. His name is

3 McVetter.(Sp)

4 THE COURT: Are your children employed?

5 THE JUROR: One daughter works for Erie Insurance

6 and the other daughters work for WICU Erie News.

7 THE JUROR: Timothy Szczepaniak. I live in

8 Linesville, Pennsylvania. I lived there for seven years.

9 THE COURT: What's your number?

10 THE JUROR: My number is 170.



11 THE JUROR: I live in Lineville, Pennsylvania. I

12 have lived there for seven years. I have lived in

13 Pennsylvania for forty-six years. I graduated high school.

14 I'm retired right now from automotive parts. I am

15 single, no children, and I do not have a lawyer.

16 THE COURT: Thank you.

17 THE JUROR: Gisele McCalla, juror number 150. I

18 live in Lake City, Pennsylvania, lived there for about six

19 months. Lived in Pennsylvania for about thirty-five years.

20 High school, retired.

21 THE COURT: What did you do before you retired?

22 THE JUROR: Sales for Sears. Married. I have

23 three children. A daughter living in Florida, who is a

24 para-legal, and two sons, thirty-eight and thirty-four. Both

25 engineers. And I don't have an attorney.

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1 THE COURT: Does the daughter that is the -- did

2 you say she is in Florida?

3 THE JUROR: Yes.

4 THE COURT: Next.

5 THE JUROR: James Harvey, juror No. 255. The City

6 of Erie for fifty-one years. Same for Pennsylvania. High  
7 school. Occupation is, I'm a maintenance technician. I have  
8 one son, twenty-seven years old. And, no, I don't have a  
9 lawyer.

10 THE COURT: Thank you. Is your son employed?

11 THE JUROR: Yes.

12 THE COURT: I didn't hear what --

13 THE JUROR: He's in the auto parts business.

14 THE JUROR: Rebecca Dilley, 223. I live in  
15 Cooperstown, Pennsylvania, Venango County. I've lived there  
16 for thirty-five years. I've lived in Pennsylvania for  
17 thirty-eight and a half years.

18 Graduated high school. I'm a quality control  
19 inspector at Coborn. I'm married. I have two children, one  
20 three and one eight. And John McGurney(Sp) is my lawyer.

21 THE JUROR: I am Vickie Thompson, juror 161. I'm  
22 from Kane, Pennsylvania, McKean County. I've lived there for  
23 forty-five years. I've also lived in Pennsylvania for  
24 forty-five years.

25 I'm a high school graduate with some college.

1 Presently, I'm an office manager at the Kane Area High  
2 School, Kane, Pennsylvania. I'm married. My husband is  
3 involved in manufacturing.

4 I have two children. My daughter is twenty. My  
5 son is seventeen, and they are both students. And I have a  
6 lawyer in Kane, Mike Baker.

7 THE COURT: Thank you.

8 THE JUROR: Juror 215. My name is Portia Lechner.  
9 I live in Sugargrove, Pennsylvania, which is Warren County.  
10 I have been there approximately fifty years. I have lived in  
11 the state approximately the same.

12 I have had a high school education and three years  
13 beyond. I am a retired interior designer currently employed  
14 part time as a bar manager. I am single.

15 I have two children. A son forty-five, who is a  
16 crew chief for a racing team and a daughter who is a teacher.  
17 My attorney is James Blackman,(Sp) Warren County

18 THE JUROR: John Hackenberg, juror No. 166. I live  
19 in Wattsburg, Erie County. Lived there for approximately  
20 thirty years. Lived in Pennsylvania about fifty-three years.

21 Graduated high school and GE apprentice course.

22 I'm retired. Married. My wife works still at Van de  
23 Camps.(Sp.) Three children. One son, twenty-nine, a  
24 daughter twenty-five that's married, and a twenty-one  
25 year-old daughter that's going to college. No lawyer.

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1 THE COURT: How about your son, where is he  
2 employed?

3 THE JUROR: Ridge Rack(Sp) as a machinist.

4 THE COURT: Okay. Thank you.

5 THE JUROR: Richard Taylor, No. 128. Live in  
6 Northeast, Erie County. Lived there for twenty-eight years.  
7 Pennsylvania thirty-one years. I have a Bachelor of Arts. I  
8 am an assessment case manager. Single, and used an attorney  
9 in the past, Richard Blakely.(Sp)

10 THE COURT: Thank you.

11 THE JUROR: Stacey Zurcher, 125. I live in  
12 Meadville, Pennsylvania, Crawford County. I have lived there  
13 for a year. I have lived in Pennsylvania twenty-five years.

14 I am currently working on my Master's. I am a  
15 teacher. I am married and my spouse is also a teacher. I do

16 not have any children and I don't have a lawyer.

17 THE COURT: Thank you.

18 THE JUROR: William Culver, 227. Erie County.

19 Harbor Creek, Erie County. I have lived in Harbor Creek ten

20 years, Pennsylvania forty-seven.

21 One year of college. I'm a truck driver. Married.

22 My wife is a social worker. One eleven year-old son and my

23 lawyer is Dave Mack.(Sp)

24 THE COURT: Thank you.

25 THE JUROR: Gail Kurdas, juror No. 211. I live in

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1 Erie. That is Erie County. I have lived there for twelve

2 years. I have lived in Pennsylvania for twelve years.

3 I have a Bachelor's Degree and a graduate

4 certificate. I'm an RN working part time now through an

5 agency, HVA. I'm married and my husband is Casmier(Sp)

6 Kurdas. He's a GE -- test man at GE. And I have a

7 twenty-five year old daughter. She has a degree in

8 journalism. And I have a lawyer named Karen Chapsinas.(Sp).

9 THE JUROR: My name is Nadena Owens, juror

10 number --

11 THE COURT: Louder, please.

12 THE JUROR: Nadena Owens, 127. I live in  
13 Jamestown, which is Crawford County. I have been there for  
14 about ten years, been in Pennsylvania for about thirty-six  
15 years.

16 I have a high school education. My occupation is  
17 cash management and fugitive investigation. I'm single. No  
18 children, and I don't have a lawyer.

19 THE COURT: Thank you.

20 THE JUROR: Lindsey Craig, number 168, and I live  
21 in Harrisville, Pennsylvania. I have lived there about two  
22 years. I have lived in Pennsylvania for about twenty-five  
23 years.

24 I have a Bachelor's Degree in science. I am a  
25 registered nurse, single, no children and no attorney,

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1 lawyer.

2 THE JUROR: Thomas Gregorchik, juror 167. I live  
3 in St. Mary's, Pennsylvania, Elk County. Lived there for  
4 twenty-five, years as well as in Pennsylvania for twenty-five

5 years.

6 I have a Bachelor's Degree in business  
7 administration. I'm a retired human resource manager for an  
8 industrial corporation. I'm married. My wife is a  
9 homemaker.

10 I have four children. A daughter that's  
11 thirty-eight. She is in sales in a software computer  
12 company. And I have daughter who is thirty-five, she is an  
13 anesthetist at a hospital in Maryland. I have another  
14 daughter that is a software trainer in Maryland, and I got a  
15 son who is an industrial engineer in Virginia.

16 I have a lawyer, and it is Tom Wagner(Sp) of Elk  
17 County

18 THE JUROR: Jim Preshak. I'm juror No. 239. I  
19 live near Wilcox in Elk County. I've lived there for  
20 fifty-seven years and in Pennsylvania for fifty-seven years.

21 I have one year of college. Millwright. I'm  
22 married. My spouse is disabled. I have two children. One  
23 girl in North Carolina, who is a speech therapist, and the  
24 other in Elk County that -- who is a housewife, and I have no  
25 attorney.

1 THE COURT: Thank you.

2 THE JUROR: My name is Laurie Bilich, juror

3 No. 225. I live in Springboro, Pennsylvania, Crawford

4 County. I have lived there for about four years and in

5 Pennsylvania for about twenty-three years.

6 High school graduate. Employed by an accounting

7 firm. I am divorced. I have a son eighteen, who is

8 currently moving to Gettysburg, and I do not have a lawyer.

9 THE COURT: Thank you.

10 THE JUROR: Elizabeth Barton, 251. I live in

11 Warren, Warren County. I have lived there for four years,

12 Pennsylvania fifteen.

13 High school graduate. I'm a food -- I'm in food

14 service. I'm married. My husband is an equipment operator.

15 I have one son that's in the military. He's twenty-one, and

16 I don't have a lawyer.

17 THE COURT: Thank you.

18 THE JUROR: Mary Joslin, No. 269. I live in West

19 Springfield, Erie County. I have lived there and in

20 Pennsylvania for ten years.



21 High school graduate. I work in manufacturing. I

22 am married and my husband also works in manufacturing. I

23 have a twenty-five year-old daughter, who also works in

24 manufacturing, and I don't have a lawyer.

25 THE COURT: Thank you.

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1 THE JUROR: Karen Gray, juror No. 180. Russell,

2 Pennsylvania, Warren County. Sixty years for living there

3 and sixty years for being in Pennsylvania.

4 I went to about fourteen years of schooling. I'm a

5 customer service representative. I am married. My husband

6 is a production supervisor. Together we have seven children.

7 Mine are -- and I don't know his age -- his children's ages.

8 My adult children are thirty-eight. She is an LPN.

9 My son is thirty-six. He's a paramedic foreman, Montgomery

10 County, Maryland. My other daughter is thirty-two. She's a

11 social worker for the Alzheimer's Unit, and my twenty-seven

12 year old-son, who is in construction. And Ken Crosby(Sp) is

13 my lawyer.

14 THE COURT: Thank you.

15 THE JUROR: Frank Fath, juror No. 240. I live in

16 Conneaut Lake, Pennsylvania, in Crawford County. I have  
17 lived there for ten years. I lived in the State of  
18 Pennsylvania for ten year.

19 Graduated from college with a Bachelor's in  
20 accounting. I'm retired from federal government. I'm a  
21 resources manager with a subtitle of auditor.

22 THE COURT: Where did you work for the federal  
23 government?

24 THE JUROR: In Chicago and in Dallas and in Atlanta  
25 and in Los Angeles and in Salt Lake City.

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1 THE COURT: What division?

2 THE JUROR: Department of Defense. Defense  
3 contract audit.

4 THE COURT: Okay.

5 THE JUROR: I'm married and my wife is a housewife.  
6 I have five children. The youngest lives in Seattle going to  
7 college. The next oldest boy, which is thirty-five, he works  
8 for Federal Express in Atlanta. My next son is two years  
9 older than him. He works for a software company in Atlanta

10 as a CPA.

11 My next oldest son is an office -- a restaurant  
12 manager in Birmingham, Alabama and my daughter is a manager  
13 for Kendrick Air in Knoxville, Tennessee, and I don't have a  
14 lawyer.

15 THE COURT: Thank you.

16 THE JUROR: William Keesler, 135. Bradford,  
17 McKean County. Forty years. Forty years living in  
18 Pennsylvania. High school education. Maintenance mechanic.  
19 Married. Food service. I have two children. Six years and  
20 six months. No lawyer.

21 THE COURT: Thank you.

22 THE JUROR: Brenda Allen, 205. Meadville, Crawford  
23 County, forty-seven years. Pennsylvania forty-seven years.  
24 Twelfth grade. Clerk typist at Crawford County  
25 Board of Assistance. Married. Husband is a tool and die

1 maker, thirteen year-old son and twenty-four year old  
2 daughter. She goes to college. No lawyer.

3 THE JUROR: Janice Nikolishen, juror No. 248. I  
4 live in Millcreek Township, Elk County, for ten years. I

5 lived in Pennsylvania fifty-seven years.

6 High school education. I'm retired. I was  
7 supervisor for patient accounting and payroll. My husband is  
8 retired. He was a City of Erie firefighter.

9 I have two children. A daughter thirty-six, who is  
10 a technical writer and a son thirty-five, who is  
11 superintendent of a construction company in Phoenix. And I  
12 do not have a lawyer.

13 THE COURT: Thank you.

14 THE JUROR: Kathyne Ziemniak, No. 228. I live in  
15 the City of Erie, Erie County, for three months and  
16 Pennsylvania twenty-four years.

17 I have a high school diploma. I'm a machinist.  
18 Not married. No children, and I don't have a lawyer.

19 THE JUROR: Diane Minman, juror 188. I live in  
20 Meadville, Crawford County. I have been there forty-six  
21 years. Lived in Pennsylvania forty-six years.

22 High school graduate with some college. I'm a  
23 store manager. Divorced. Two sons, age nineteen and twenty.  
24 Both are students, and I do not have a lawyer.

25 THE COURT: Thank you.

1 THE JUROR: Colette Barnett, juror 264. Franklin,  
2 Venango County, for twenty-five years. In Pennsylvania  
3 forty-eight years.

4 I have a Master's in education. I'm an elementary  
5 teacher. And my husband is a senior electrical engineer for  
6 Carlin(Sp) Engineering. I have one daughter age thirteen,  
7 and Mike Snyder is my lawyer.

8 THE JUROR: Verna Trudeau. My number is 173. I  
9 live in Millcreek, Erie County. I have lived there  
10 fifty-eight years. I have lived in Pennsylvania fifty-eight  
11 years.

12 I graduated high school. I work for GE. I am  
13 married. My husband is retired. My children, thirty-six and  
14 thirty-five. One works for PNC Bank. The other one is a  
15 housewife, and my lawyer is Stephen Tetwell.(Sp).

16 THE COURT: What do you do at GE?

17 THE JUROR: I'm an assembler.

18 THE JUROR: Susan Guianen, No. 265. I live in  
19 Brookside Harbor Township, Erie County. I have lived there  
20 for -- in my house for thirteen years; Pennsylvania

21 sixty-one.

22 I went to high school and a couple years in the  
23 medical field. I am a medical assistant. My husband is  
24 retired from Welsh(Sp) Foods. I have four children. My  
25 oldest is forty and he works in plastics. My next son is

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1 thirty-eight and he works at GE. Next son is thirty-six and  
2 he's a salesman. My daughter is thirty-four and she is a  
3 registered nurse and I have no lawyer.

4 THE JUROR: Bob Nahay, juror 242. I live in  
5 Meadville, Pennsylvania, Crawford County. Thirty-seven  
6 years. I lived in Pennsylvania for forth forty-three years.

7 I went to high school and various technical  
8 schools. I'm an industrial electrician. I'm married.  
9 Spouse works at Crawford Central School District. Two  
10 children. One goes to YSU(Sp) and she also works at  
11 Allegheny College in the summer. The other son is a student,  
12 and I have no lawyer

13 THE JUROR: Cindy Porter, 147. Guys Mills,  
14 Crawford County. I lived there for eight years and I have

15 lived in Pennsylvania twenty-six years.

16 I graduated from high school, and I am currently  
17 pursuing a degree. I'm a human resource specialist. I am  
18 married. My spouse is a maintenance worker. I have two  
19 children age thirteen and twenty-one. Twenty-one year old is  
20 a student, and I did have a lawyer, John Spatero(Sp) in the  
21 past, but he's now a Judge.

22 THE JUROR: Juror 232, Lucille Grabofski. I live  
23 in Millcreek, Erie County. I lived in this state for  
24 seventy-two years. Forty-one years in Millcreek.

25 I went to design school. Graduated. I am a

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1 retired federal employee for the Commerce Department  
2 gathering statistics. I am married. My husband is retired.  
3 Draftsman. We have one child. He's forty-four and he owns a  
4 restaurant in North Carolina. We do not have a lawyer.

5 THE COURT: I think that's probably it. May I see  
6 the lawyers and Mr. Leveto at sidebar?  
7 (Sidebar discussion.)

8 THE COURT: Mr. Voracek or Ms. Calvin, any  
9 challenges for cause?

10 MR. VORACEK: No, Your Honor.

11 MS. CALVIN: No, Your Honor.

12 THE COURT: Mr. Leveto or Mr. Misko?

13 What has been said so far could be off the record.

14 Anyway, the question is, are there any challenges

15 for cause? Now, you'll have -- there are a -- once the

16 challenges for cause are out of the way, then we got a pool

17 of thirty-two jurors. And out of that pool, you will be

18 picking twelve jurors and two alternates. And we have

19 sixteen peremptory challenges. The defendant has ten and the

20 government has six. And then one each on the -- Rich, on the

21 alternates, what do they have, one more challenge each?

22 MR. WITAS: (The clerk) Yes. Here's the list.

23 That's exactly how they are to pick.

24 THE COURT: Good. My question now is, are there

25 any challenges for cause? Because, if not, I'll excuse

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1 everybody except for the people in the pool. Everybody agree

2 there is no challenges for cause?

3 MR. VORACEK: Yes, Your Honor.



4 MS. CALVIN: Yes.

5 THE COURT: Okay, Rich.

6 (End of sidebar.)

7 THE COURT: Everybody except people with a  
8 questionnaire now. We appreciate your attention to these  
9 questions and your cooperation. We can excuse you, but see  
10 Mr. Witas out in the hall. He will give you further  
11 instructions. If you have a question -- if you have a  
12 question sheet, stay here.

13 Okay, ladies and gentlemen, be sure to come back to  
14 the seat that you are in now. We'll be picking twelve jurors  
15 and two alternates from this pool of jurors, but I think this  
16 is a good time for a break. And we'll -- it's twenty to one  
17 now.

18 This shouldn't take too long when we get started.  
19 We'll ask you to be back in your seat at ten to one and then  
20 we'll have a break after the jury is selected.

21 (Court recessed at 12:40 p.m.)

22 (Court reconvened at 12:50 p.m.)

23 THE COURT: Be seated, please.

24 Well, as I said, ladies and gentlemen, now is the  
25 time for the lawyers to make their selections. And once that

1 is accomplished, why, we'll break for lunch and then we'll

2 begin the testimony after lunch.

3 May I see the lawyers at sidebar?

4 (Sidebar discussion.)

5 THE COURT: I have been informed by my deputy clerk

6 that the government is only using two peremptory challenges

7 and Mr. Leveto has waived his right to any peremptory

8 challenges.

9 Is that correct, Mr. Leveto?

10 MR. LEVETO: As far as I know, that's right.

11 THE COURT: Mr. Misko, is that correct, he's

12 waiving --

13 MR. MISKO: Yes.

14 MR. WITAS: (The Clerk) And that's including the

15 alternates?

16 MR. LEVETO: Yes.

17 (End of sidebar.)

18 MR. WITAS: (Judge's Clerk) the following jurors,

19 as I call your names, please step down and take a seat in the

20 back. Richard Taylor. William Culver.

21 The following jurors, as I call your names, please

22 come up and take the seats that are assigned to you.

23 Seat No. 1, Nadena Owens. Third seat in the back,

24 please. And seat No. 11, Lindsey Craig. Alternate juror

25 No. 1, Susan Guianen. And alternate juror No. 2,

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1 Robert Nahay.

2 THE COURT: Mr. Witas, you will now swear the jury.

3 MR. WITAS: (Judge's Clerk) Will the jury panel

4 please stand and raise your right hands.

5 You and each of you do solemnly swear that you will

6 well and truly try this issue between the United States of

7 America versus Daniel J. Leveto, at Criminal No. 01-06, Erie,

8 and a true verdict render according to the evidence and the

9 law as given to you by the Court, so help you God?

10 Be seated.

11 THE COURT: Ladies and gentlemen who were not

12 selected for this jury, we certainly appreciate your

13 attention. As you see, we go through quite a process to come

14 to ending up with a jury, and we certainly appreciate your

15 attention.

16 I will ask you folks to see Mr. Witas out in the

17 hall there and he'll give you further instructions.

18 (The panel left the courtroom.)

19 THE COURT: Okay, ladies and gentlemen, what we are

20 going to do is, we'll break for lunch now and Miss Burkoff

21 here will -- I think she is down here. There she is.

22 Anyway, she'll show you where our jury room is. And from now

23 on when you come in the building, you come to our jury room

24 until the trial is over, and we'll -- let's see. It's

25 almost -- we will ask you to be back and ready to go at two

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1 o'clock, and come in our jury room and then you will be

2 called into the courtroom at the appropriate time.

3 (The jury left the courtroom.)

4 THE COURT: Do you want to come up to sidebar?

5 This juror says she got something she wants to talk about.

6 (The juror came to sidebar.)

7 THE COURT: Name and number.

8 THE JUROR: Vickie Thompson, juror 161. Okay. I

9 have travel -- prearranged travel plans. I don't know how

10 long the trial will last.

11 THE COURT: When does your travel start?

12 THE JUROR: June 9th.

13 THE COURT: Oh, we will be done by then.

14 THE JUROR: Positively?

15 THE COURT: Positively. Promise.

16 THE JUROR: Okay.

17 THE COURT: Okay.

18 (The juror left sidebar.)

19 (End of sidebar.)

20 (Court recessed at 1:05 p.m.)

21 (Court reconvened at 2:20 p.m.)

22 THE COURT: Well, that was a very smooth entrance,

23 please. Rich is a tough drill instructor.

24 Well, ladies and gentlemen, what we are going to do

25 now is, I am going to give you what I call a preliminary

1 charge. This is just kind of an outline of the way we expect

2 the trial to go. After that, the government may make an

3 opening statement, if it wishes, in which it will outline,

4 you know, what it expects to be able to prove here. It's not  
5 an argument. It's just a statement of what they hope to  
6 prove. And then after that, Mr. Leveto may make a statement  
7 if he wants to or he may waive making that statement. That  
8 is entirely up to him.

9 So, with that, let me give you these words of  
10 advice and instruction.

11 As you know, you have now been sworn in the case of  
12 United States of America against Daniel Leveto. And this is  
13 intended to be an introduction to the trial of this case and  
14 it's not a substitute for the detailed instructions about the  
15 law and the evidence that I will give you at the end of the  
16 trial.

17 This is a criminal case commenced by the  
18 United States, which I may sometimes refer to as the  
19 prosecution or the government. And the defendant is  
20 Daniel Leveto.

21 Now, the case is based on a three-count federal  
22 grand jury indictment charging the defendant with various  
23 violations of the federal income tax laws.

24 Count 1 of the indictment provides that the

1 combined, confederated and agreed with other individuals to  
2 defraud the United States by impeding, impairing, obstructing  
3 and defeating the lawful governmental functions of the  
4 Internal Revenue Service in the ascertainment, computation,  
5 assessment and collection of federal income taxes.

6 The indictment further provides that the defendant  
7 committed certain overt acts in furtherance of this  
8 conspiracy.

9 Count 2 charges that on or about April 15th, 1995,  
10 in the Western District of Pennsylvania, the defendant did  
11 willfully make and subscribe -- and, as I told you, that  
12 means signed -- a joint U.S. individual income tax return  
13 Form 1040 for the calendar year 1994, which was verified by a  
14 written declaration that it was made under the penalties of  
15 perjury and it was filed with the Internal Revenue Service,  
16 which said income tax return he did not believe to be true  
17 and correct as to every material matter in that he failed to  
18 disclose and omitted gross receipts from a business activity,  
19 whereas, he then and there well knew and believed that he was

20 required to disclose the gross receipts from the business  
21 activity on his tax return and he failed to disclose that he  
22 had interest in or a signature or other authority over a  
23 financial account in a foreign country, whereas, he then and  
24 there well knew and believed he had an interest in or a  
25 signature or other authority over a financial account in a

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1 foreign country. And this is in violation of the United  
2 States Code.

3 And, similarly, Count 3 of the indictment charges  
4 the same violation of Title 26, United States Code,  
5 Section 7206(1), which is a willful subscription to a false  
6 federal income tax return for the calendar year 1995.

7 Now, in a nutshell, those are the charges against  
8 Mr. Leveto.

9 You should keep in mind, and this is very  
10 important, that in every criminal case, the government is  
11 merely a party to the case; no more, no less. There is no  
12 presumption that just because the government is bringing this  
13 action, that the defendant must be guilty.



14 On the contrary, the government always has the  
15 burden throughout the trial of proving the guilt of the  
16 defendant beyond a reasonable doubt. And because the  
17 defendant has pled not guilty, questions of fact will be  
18 presented at trial and you have been chosen as the jurors to  
19 determine those facts.

20 The indictment simply sets out the charges. It's  
21 not evidence against the defendant. The government has the  
22 burden of proving each of the essential elements of the  
23 indictment beyond a reasonable doubt.

24 A reasonable doubt is a doubt based upon reason and  
25 common sense, the kind of a doubt that would make a

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1 reasonable person hesitate to act. Proof beyond a reasonable  
2 doubt must, therefore, be proof of such a convincing  
3 character that a reasonable person would not hesitate to rely  
4 and act upon it in the most important of that person's own  
5 affairs. The purpose of this trial is to determine whether  
6 the government can meet its burden to show that the defendant  
7 is guilty beyond a reasonable doubt.

8 I often tell my jurors that there are really two

9 judges in the case. You collectively as a juror are the  
10 judge with respect to the facts. It is going to be up to you  
11 to determine what the facts are. I'm the judge with respect  
12 to the law. In other words, I am -- a Judge is a pretty  
13 fancy name for a referee. Actually, I am in charge of  
14 telling you what the law is and then, based on my  
15 instructions to you on the law, you will be the ones to  
16 decide what the facts of this case are and whether the  
17 government has succeeded in meeting its burden of proof.

18 Now, you will notice that Mr. Leveto is  
19 representing himself. And, of course, this should have no  
20 effect on your decision in the case, as all individuals who  
21 come to court have the right to represent themselves. This  
22 may require additional conferences or discussions among  
23 Mr. Leveto, his standby counsel, the lawyers for the  
24 United States and me. But, to insure that the trial proceeds  
25 as smoothly as possible under the circumstances, in which one

1 party is unfamiliar, or may be unfamiliar with this branch of  
2 the legal system, we have to make some exceptions to keep the

3 playing field level, so to speak.

4 Now, you will be expected to perform your duty of  
5 deciding the facts without bias for either the defendant or  
6 the government. The law does not permit jurors to be  
7 governed by sympathy or prejudice or public opinion. Both  
8 the defendant and the government expect that you will  
9 consider all of the evidence impartially, follow the law as I  
10 state it, and reach a just verdict regardless of the  
11 consequences.

12 Now, the trial will proceed in this order:

13 First, the parties may make opening statements, as  
14 I indicated. The government may make an opening statement at  
15 the beginning of the case and the defendant may then make an  
16 opening statement then or delay the opening statement until  
17 the close of the government's case. What's said in the  
18 opening statements is not evidence. It is not supposed to be  
19 argument. The statements simply serve to provide you with an  
20 introduction to the case.

21 Secondly, the government will then introduce  
22 evidence in support of the charges contained in the  
23 indictment. After the government has presented its evidence,  
24 the defendant may present evidence, but is never obligated to

25 do so.

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1 At the conclusion of the evidence, the government  
2 will present an oral argument in support of its side and the  
3 defendant will present an oral argument in support of his  
4 side. What is said in the closing arguments is not evidence,  
5 just as what was said in the opening statements is not  
6 evidence.

7 The purpose of the closing argument is to present  
8 the parties' positions as to what the evidence shows and what  
9 conclusions may be drawn from that evidence. I'll then  
10 instruct you on the law, after which you will retire to  
11 consider your verdict. Your verdict must be unanimous.

12 Under our criminal procedure, you, the jury, are  
13 the sole judges of the facts, as I said. It is especially  
14 important, therefore, that you perform that duty carefully  
15 and conscientiously, for ordinarily there is no means of  
16 correcting an incorrect finding of fact by a jury. When you  
17 go into your deliberations, you will be all by yourselves.  
18 There won't be anybody else in there, no Court Reporter, or

19 anybody, with you in the jury room. The decision will be

20 entirely in your hands.

21 Out here, if I make a mistake on the law,

22 everything said out here is taken down by the Court Reporter.

23 So, if I do make a mistake on the law, some Court of Appeals

24 can look at that and decide whether or not I have made a

25 mistake. But, with respect to your deliberations, there is

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1 no way to discover that a mistake was made if, indeed, you

2 should make a mistake.

3 So, as I say, you are the finders of the fact.

4 But, on the other hand, I instruct you that the law which you

5 are to consider is to be only the law as I give it to you.

6 And it is going to be your duty to follow it even though you

7 might disagree with the law as I explain it. And there is an

8 important reason for this.

9 Your deliberations are going to be secret, as I

10 said, and if you were to use different law than that which I

11 gave you, no one would ever be able to know this and you

12 would committing an injustice to one of the parties in the

13 case.

14 Now, one of the important things I want to tell you  
15 about before the testimony begins concerns the credibility of  
16 the witnesses, that is, their believability.

17 Some of the ways by which you may judge the  
18 credibility of a witness is the manner in which the witness  
19 gives the testimony, the witness' attitude on the stand, the  
20 reasonableness or unreasonableness of what the witness says,  
21 the witness' means of knowing any facts, the witness'  
22 interest in the outcome of the case, any feeling the witness  
23 may have for or against one of the parties, the witness'  
24 ability to remember, or any previous contradictory statements  
25 the witness has made.

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1 Ultimately, you must decide what weight you will  
2 give to the testimony of each of the witnesses who have  
3 testified.

4 Now, when an attorney for the government, and in  
5 this case, Mr. Leveto when acting as his own attorney, asks a  
6 question, the words in their question are not evidence. They  
7 are merely the question. You must listen to the answer of

8 the witness and that is the testimony on which you must base

9 your decision.

10 Well, what do I mean by that? Well, suppose

11 someone asking the questions, the lawyer or Mr. Leveto, says

12 to the witness, was the car red? And the witness says, well,

13 I don't know. Well, at that point, you would have to put out

14 of your mind that the car might have been red because, you

15 see, that came from the lawyer, not from the witness. It's

16 the answer of the witness which is the testimony you are to

17 consider in the case.

18 And just as the remarks by any of the participants

19 about the evidence in the case are not evidence in itself,

20 any remarks that I might be make about the testimony which

21 differ from your recollections are not binding on you.

22 Some people think that the jury will have available

23 to it a copy of the transcript. That is what the Court

24 Reporter records during the trial. Well, that's not so. You

25 are expected to use your own memories to recall what was said

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1 in the testimony.

2 During this trial, I am going to permit you to take

3 notes. Many Courts don't permit note taking by jurors, but I  
4 do. I believe it's all right, and a word of caution,  
5 however, is in order.

6       There is often a tendency to attach undue  
7 importance to matters which one has written down. Some  
8 testimony which is considered unimportant at the time it is  
9 presented, and thus not written down, may take on greater  
10 importance during the trial in light of all the evidence  
11 presented. Therefore, I instruct you that your notes are  
12 only a tool to aid your individual memory. Above all, your  
13 memory should be your greatest asset when it comes time to  
14 deliberate and render a decision in the case. When you leave  
15 at night, you should leave your notes in the jury room.

16       During the trial, any notes taken by any juror  
17 concerning this case should never be disclosed to anyone  
18 other than a fellow juror. And we don't want you to discuss  
19 the case, of course, until the trial is over and all the  
20 evidence is in and then you have your instructions on the law  
21 and retire to deliberate.

22       There will be occasions during the trial when  
23 objections might be made to certain evidence presented or



24 questions asked. An attorney or participant has a duty to

25 object if the attorney believes that a question is improper

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1 or that certain evidence should not be admitted. But, unless

2 there is an objection, I don't have to make any ruling on the

3 evidence. And, therefore, you should never hold it against

4 either side when there is an objection.

5 At times, I may sustain the objections or I may

6 order that you disregard certain testimony. I think that's

7 perhaps one of the more difficult things that we ask our

8 jurors to do. Sometimes a witness will blurt out something

9 which is really entirely inappropriate for the trial. It

10 might be prejudicial for several reasons, that kind of thing.

11 And in that case I might say that the jury should disregard

12 that testimony. And I know it's a human reaction. You are

13 liable to think, oh, geez, the Judge said forget it,

14 disregard it, now I am going remember it because that's what

15 he told me I wasn't supposed to do.

16 Well, if you can't forget it, I ask you to at least

17 put it off in another compartment of your minds and don't let

18 it influence you in your deliberations of the case.

19 You are expected to follow my instructions and not  
20 consider any evidence to which an objection has been  
21 sustained or which I have told you to disregard.

22 From time to time, there will be conferences over  
23 here at sidebar, and you saw many of those during the jury  
24 selection process. And that is when I meet with the people  
25 at that end of the bench to discuss some legal point. And we

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1 hold these conferences outside your hearing not because we  
2 are trying to withhold any evidence from you that you should  
3 hear but, rather, we are trying to avoid mistakes, and it's  
4 simply a way of being sure that you have before you only  
5 legally correct evidence on which to base your decision. I  
6 hope there won't be too many such conferences, but I imagine  
7 there will be some, and I ask for your patience in advance.

8 At times, I may ask a witness questions and if I  
9 do, it is to bring out matters that I feel should be brought  
10 out and not in any way to reveal my opinion about the facts  
11 or to indicate the weight that I feel you should give the  
12 testimony of that witness.

13 No one is permitted to talk to you about this case,  
14 and I don't want you to talk about it until it's all over.  
15 And by "anyone," I mean your wife, your husband, your  
16 children, your parents, your relatives, your friends, no one  
17 at all. I don't even want you to talk to each other about  
18 the case until you have heard all the evidence, until I give  
19 you the final charge on the law and you begin your  
20 deliberations in the jury room. And we have good reason for  
21 requiring this.

22 Suppose a juror should make up his or her mind  
23 early in the case and talk to others about it, and maybe  
24 others are giving that juror some advice, too, which would be  
25 wrong. But then perhaps later on in the trial, other

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1 evidence comes in and now that juror might want to change his  
2 mind, but because he or she has already stated a position,  
3 again, it's a human reaction, oh, geez, now I don't want to  
4 look like I'm stupid, I don't want to be embarrassed. So, we  
5 avoid that situation entirely by just saying don't talk about  
6 it.

7 Of course, when you finally retire, we want you to

8 talk about it for just as long as you want to. But, in order  
9 to do the best possible job, don't discuss the evidence until  
10 after you have heard all of it and until you have heard the  
11 final charge on the law from me. Then when you begin to  
12 deliberate, you should discuss it freely and openly and at  
13 length with your fellow jurors.

14 I gather that there has been some publicity about  
15 this case at some time. I don't want anything that you may  
16 have seen or read about the case in the paper or other media  
17 to influence you in any way. You are to decide this case on  
18 the basis of what you see and hear in this courtroom only.

19 If there should be something more in the news media  
20 and you recognize that that looks like the case I am a juror  
21 on, we ask you don't pay attention. If it is on TV, turn it  
22 off. If there is something in the paper, we ask you don't  
23 read it. Get your spouse to cut it out and save it until  
24 after the trial is over, if you want to, but please insulate  
25 yourself from any outside influences like that.

1 And, here again, I think the reason is fairly

2 clear. You have taken an oath to decide this case on the law  
3 as I give it to you and the evidence as you hear and see it  
4 here in the courtroom. The parties have a right to expect  
5 you to live up to that oath. If you talk to someone outside  
6 the courtroom, you could get a false impression about either  
7 the facts or the law and you would certainly be talking to  
8 somebody who doesn't know as much about the case as you do.

9 And the same would be true if you should read about  
10 it or see something on the television about it. You would be  
11 listening to excerpts that are put together by persons who  
12 don't have the same privilege of sitting throughout the case  
13 as you do and won't know as much about it as do you.

14 If at any time during the trial, you should read or  
15 hear something outside the courtroom that you think might  
16 influence your decision, you should present that to my  
17 attention immediately. Because if anyone should attempt to  
18 discuss the case in your presence when, for example, you are  
19 standing in the hallway or in the elevator or in one of the  
20 local restaurants around here, you know, you could be sitting  
21 right next to somebody that's going to be a witness in the  
22 case. You might not know it. They might not know that you  
23 are going to be a juror -- that you are a juror. But, again,

24 we avoid that situation entirely if we just don't talk about  
25 it until everything is over.

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1 If you feel that somebody is persisting in trying  
2 to talk to you about the case outside the courtroom, you  
3 should advise me about that immediately because that is a  
4 very serious matter.

5 The attorneys in this case are very affable  
6 persons. But, if they see you somewhere, they are not going  
7 to chat with you because they are under my instructions not  
8 to talk to you outside this courtroom under any  
9 circumstances.

10 After the closing arguments, I will explain the law  
11 that applies in the case. And when you retire, you will  
12 consider the law as I've explained it to you and then you  
13 will determine the facts and arrive at your decision.

14 It is going to be for you to decide what  
15 conclusions you will draw from the testimony and the  
16 evidence. You have been assigned a very solemn and a very  
17 important duty. It is one that I am sure you will accept and

18 devote your conscientious and best efforts to in coming to a

19 just result.

20 Now, as far as housekeeping is concerned, as I said

21 before lunch, whenever you come in the courtroom, you should

22 come up here to our jury room. We will normally start at

23 9:00 o'clock in the morning, and I do like to be prompt.

24 This lunch hour today was a little bit of an exception, kind

25 of running late, but we try to start on time.

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1 We will normally work from nine until

2 twelve-thirty -- with a break in the middle of the morning --

3 for lunch. We will start again at quarter to two, work

4 through the afternoon until between four-thirty and five,

5 with a break in mid-afternoon. That is the normal procedure.

6 There will not be -- and I don't know how long the

7 case is going to take. You never know how long any

8 particular witness is going to take. But, if we are still

9 going by Thursday, I'll tell you there will not be any court

10 on Friday and there will not be any court on Monday, Memorial

11 Day. So, if it does go beyond this Thursday, why, we will be

12 picking it up again Tuesday, and I certainly would think we

13 will be finished by the following week. But, that is the way  
14 the schedule looks right now.

15 So, with all of these instructions in mind, we will  
16 have the opening statement on behalf of the government.

17 MS. CALVIN: May it please the Court, members of  
18 the jury, the defendant, Daniel Leveto, is a veterinarian and  
19 he operated a very successful practice in Meadville,  
20 Pennsylvania.

21 Although the practice was called Langdon and  
22 Leveto, Dr. Leveto, the defendant, was the sole owner and he  
23 made all the decisions. He had bought the business from  
24 Dr. Langdon in the 1980's. Because he was the sole owner and  
25 made all the business decisions, he was completely in charge.

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1 The defendant had bank accounts in the name of Langdon and  
2 Leveto. And it was the normal practice of his business to  
3 deposit all of the business receipts into these accounts, and  
4 he had signature authority over these accounts.

5 By 1989, the defendant's business was making gross  
6 receipts of over half a million dollars a year, and the



7 defendant knew that he had a legal obligation to file tax

8 returns which reported his business, the business activities,

9 its gross receipts and any profits which it generated, and

10 the defendant did.

11 And in 1989, the defendant filed tax returns

12 declaring that he had over \$531,000.00 in receipts and profit

13 well over \$100,000.00.

14 In 1990, the defendant again filed tax returns

15 reporting a business activity and its gross receipts and

16 profits. That year the tax returns reflect the business as

17 earning \$567,000.00, with a profit of \$177,000.00.

18 And with the profit that the defendant generated

19 from his veterinarian practice, he was able to maintain a

20 very nice lifestyle. He lived in a nice home with a swimming

21 pool. He drove nice cars. He bought his wife jewelry. He

22 took nice vacations.

23 Then in 1991, the defendant joined an organization

24 called First America Research, also called FAR. And this was

25 based in Colorado and operated by two men by the name of

1 Donald Turner and Paul Harris. Together, Turner and Harris

2 directed all of FAR's activities. Donald Turner had written  
3 a book called Tax Free, How The Super Rich Do It. And the  
4 goal of FAR was to help people just like the defendant hide  
5 their income and assets from the Internal Revenue Service.

6 After the defendant became a member of FAR, he  
7 started taking steps to hide the fact that he was the owner  
8 of the veterinary practice that he operated.

9 In mid-1991, the defendant told people that he had  
10 sold his business to an entity called Center Company. The  
11 defendant filed tax returns for 1991 which stated that he had  
12 sold his company in August of 1991. And the 1991 tax return  
13 only accounted for some of the profits and the business  
14 receipts, the first half of 1991.

15 But, the defendant continued to operate this  
16 veterinary practice making all the business decisions. He  
17 filed tax returns for 1992, 1993, 1994 and 1995, but he never  
18 again accounted for the veterinary practice and its receipts.  
19 This despite the fact that the veterinary practice continued  
20 to thrive, making over half a million dollars a year.

21 Over the course of this trial, you are going to  
22 hear a lot about Center Company. Paperwork was generated to

23 make it appear as if Center Company was a company located in  
24 the Turks and Caicos Islands, but you will learn that Center  
25 Company was a sham. It was a nominee name used by the

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1 defendant to hide his ownership of the practice.

2 With the guidance of Don Turner and Paul Harris,  
3 the defendant took steps to make it look as if Center Company  
4 was the actual owner of his business. He opened three bank  
5 accounts in the name of Center Company doing business as  
6 Langdon and Leveto.

7 And the goal of this whole scheme was to prevent  
8 the Internal Revenue Service from identifying income received  
9 by the defendant and from learning about assets which he  
10 owned. Because of these actions, the defendant is charged  
11 with three crimes, and that is why we're and you are here  
12 today.

13 As Judge Cohill told you, I'm Rita Calvin, and  
14 together with Tom Voracek, I represent the United States.  
15 Special Agent Richard Adams will be assisting us with the  
16 prosecution of this case. He was the case agent.

17 This opening is an opportunity for me to tell you

18 what the government intends to prove and give you a preview  
19 of the evidence which will be presented to you.

20 We will prove that the defendant conspired with  
21 Donald Turner, Paul Harris and others, to defraud the  
22 United States by committing a number of acts which were  
23 designed to deceive the Internal Revenue Service and to  
24 conceal the defendant's ownership of his veterinarian  
25 practice. As part of the plan, he also filed false returns

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1 for the years 1994 and 1995.

2 The facts of this case are somewhat confusing, but  
3 they are confusing because the defendant designed the scheme  
4 to be that way. He sent money out of the country. Then  
5 using nominee names, he brought the money back into the  
6 country. He had money transferred into accounts over which  
7 he had signature authority. He deliberately used different  
8 names and took steps making it almost impossible for the  
9 Internal Revenue Service to calculate his income or find his  
10 assets.

11 We will prove to you that this sale to Center

12 Company was nothing more than a paper transaction and its

13 only purpose was to deceive the Internal Revenue Service.

14 The defendant, himself, referred to it as a paper tiger. Don

15 Turner and Paul Harris helped the defendant by making it

16 appear that he had sold his business to Center Company for

17 \$230,000.00.

18 According to the contract of sale, Center Company

19 is owned by Jack Williams and it's located in the Turks and

20 Caicos Islands. The defendant called himself the general

21 manager of Center Company, and he continued to make every

22 business decision for the veterinary business purportedly

23 owned by Center Company, but he admitted that he never met or

24 spoke to Jack Williams.

25 The business receipts were deposited into a Center

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1 Company account in Meadville, Pennsylvania, over which the

2 defendant had signature authority and he alone decided how

3 the money would be used. And although the defendant claimed

4 to have no ownership in Center Company or the practice, life

5 continued for him much as it always had.

6 He still lived in a nice house. He still drove

7 nice cars. He still took nice vacations. He still bought  
8 his family nice jewelry. In fact, after the alleged sale of  
9 the business, the defendant was able to buy two airplanes  
10 which he took on pleasure trips.

11 In addition to opening bank accounts in the nominee  
12 name of Center Company, the defendant used other names to  
13 transact business. He directed one of his employees to open  
14 a Post Office box in Meadville, Pennsylvania, in the name of  
15 Wayne Co. She opened Post Office Box 54 in Meadville and  
16 gave the key to the defendant. Wayne Co. is just another  
17 name used by the defendant.

18 The defendant also used other nominee names. The  
19 defendant opened an account in the Grand Cayman Islands in  
20 the name of Leonard Adler. The application for this account  
21 shows that Leonard Adler received his mail at Post Office  
22 Box 54 in Meadville. The application form for the  
23 Leonard Adler account requires two references to open the  
24 account. And the application form shows that the first  
25 reference was the defendant and the second reference was

1 First America Research.

2 The evidence will establish that there was no  
3 Leonard Adler. There was no Leonard Adler who worked for the  
4 defendant. That was just another name used by the defendant.

5 The defendant also opened a bank account in the  
6 Turks and Caicos Islands in the name of Box Elder. Box Elder  
7 is another nominee name used by the defendant. The defendant  
8 used the Leonard Adler account and the Box Elder account to  
9 bring money into the United States, money that he had already  
10 sent offshore. And the defendant used the name Box Elder  
11 again to open an account at PaineWebber in Bethesda,  
12 Maryland. The defendant claimed that the account was for a  
13 foreign entity, but the defendant had signature authority  
14 over that account as well.

15 The evidence will show that the defendant used the  
16 name Center Company, Box Elder, Leonard Adler, Wayne Co. and  
17 they were all him. They were all names that he used to  
18 disguise the fact that the money from the veterinary clinic  
19 was all his money and he was free to use it however he  
20 wanted.

21 The defendant also opened a bank account in his own  
22 name in the Channel Islands. Both the defendant and his then

23 wife, Margaret, had signature authority over that account.

24 Both the defendant and Mrs. Leveto had debit cards so the

25 defendant could send the money to the Channel Islands and use

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1 the debit card to pull the money out of the account and bring

2 it back here to spend. And it was just one more way that the

3 defendant attempted to keep the Internal Revenue Service from

4 learning about his income and his assets.

5 As a result of this scheme which the defendant

6 orchestrated, he is charged with three criminal counts. One,

7 he was charged with a count of conspiracy, and he's also

8 charged with filing false Federal Individual Income Tax

9 Returns for 1994 and 1995.

10 At the end of this case, Judge Cohill is going to

11 instruct you on the law. But, I am going to tell you a

12 little bit about what the government is going to prove.

13 Count 1 alleges that the defendant conspired to

14 defraud an agency of the United States, in violation of

15 Title 18, U.S.C., Section 371. And a conspiracy is an

16 agreement between two or more people to do something illegal.



17 In this case, the defendant is charged with entering into an

18 agreement to defraud the United States by impeding,

19 impairing, obstructing and defeating the lawful function of

20 the Internal Revenue Service in the ascertainment,

21 computation, assessment and collection of taxes.

22 We will prove that the defendant willfully joined

23 this conspiracy, and we will also prove that one of the

24 conspirators committed at least one of the overt acts which

25 is charged in the conspiracy as its goal. And the acts which

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1 were committed and charged include generating paperwork to

2 make it appear as if Center Company was a foreign corporation

3 to which the defendant had sold his business, opening bank

4 accounts in the name of Center Company, opening bank accounts

5 in false names in foreign country, filing false Federal

6 Individual Income Tax Returns for '94 and '95, providing

7 information for the preparation of Center Company returns,

8 the filing of tax returns purportedly on behalf of Center

9 Company, and the transfer of the defendant's home to his

10 parents.

11 The defendant knowingly entered into this

12 conspiracy with the intent to further its purpose.

13 Counts 2 and 3 of the indictment charge the

14 defendant with willfully making and signing materially false

15 tax returns for the years 1994 and 1995, in violation of

16 Title 26, United States Code, Section 7206(1). And we will

17 prove that he signed these tax returns under penalties of

18 perjury.

19 The indictment charges that these tax returns are

20 false as to two material matters.

21 The first material matter is that the defendant

22 failed to disclose and omitted gross receipts from a business

23 activity.

24 The second material matter that he failed to

25 disclose was that he had an interest in or signature

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1 authority over a financial account in a foreign country.

2 And in order to prove this, the government will

3 prove to you that the defendant signed and filed these tax

4 returns and that they were false as to these material

5 matters, that he signed them under penalties of perjury and

6 that he did not believe these tax returns to be true and  
7 correct as to every material matter at the time that he  
8 signed them, and that he subscribed to it with the specific  
9 intent to disobey the law.

10 You are going to hear from a number of witnesses.  
11 You are going to hear from the defendant's employees,  
12 Barbara Stevens, Karen Jeannerett and Mildred Custard. All  
13 worked for the defendant both before and after the alleged  
14 sale.

15 They will tell you that nothing in the practice  
16 changed after the sale. They will tell you they never heard  
17 from or spoke to anyone from Center Company. They will tell  
18 you they never heard of Leonard Adler, and they will tell you  
19 that in addition to selling -- to running his veterinary  
20 practice, the defendant began to sell Don Turner's book, Tax  
21 Free, How The Super Rich Do It.

22 Barbara Stevens and Karen Jeannerett will testify  
23 regarding the books and records that were kept at the  
24 business, and you will see the records which were kept, and  
25 they show that throughout this period, the practice continued

1 to generate gross receipts of over half a million dollars.

2 Miss Jeannerett will tell you that the defendant  
3 told her to open a Post Office box in Meadville in the name  
4 of Wayne Co., which she did. And she will also tell you that  
5 the defendant regularly brought in bills from home to be paid  
6 by the business and that the defendant directed her to book  
7 them as business expenses.

8 Mildred Custard, who worked at the practice for  
9 years, will tell you that the defendant told her the sale was  
10 only for tax purposes. And all of the office workers will  
11 tell you that they never heard of Leonard Adler, who was  
12 supposed to be a trainee of the defendant's.

13 Another witness will be Manuel Gonzalez.  
14 Mr. Gonzalez is a retired Special Agent for the Criminal  
15 Investigation Division of the Internal Revenue Service. He  
16 worked undercover as Joe Rivera. Mr. Gonzalez bought  
17 Don Turner's book from the defendant and he had a number of  
18 meetings with the defendant. The meetings between  
19 Mr. Gonzalez and the defendant were taped, and you will hear  
20 some of the matters which they discussed.

21 You will also hear from James Scarpitti, a

22 certified public accountant, who prepared the defendant's tax  
23 returns. He will tell you that when he began working for the  
24 defendant in the mid-eighties, he received very detailed  
25 information. But, after the sale to Center Company, he

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1 received very limited information which was all provided by  
2 the defendant.

3 And Mr. Scarpitti was never made aware that the  
4 sale to Center Company was a sham, or that Center Company was  
5 only a nominee name used by the defendant for Center Company,  
6 the practice was paying the living expenses, or some of those  
7 expenses, for the defendant.

8 Another witness will be a representative of the  
9 Internal Revenue Service, Mary Somma. She will introduce the  
10 tax returns which the defendant filed and tax returns which  
11 were filed on behalf of Center Company. She will also  
12 introduce amended tax returns which were filed by the  
13 defendant.

14 In 1996, the defendant filed amended returns for  
15 all of the years 1991 through 1995. An amended return is a  
16 return which has a change in information from a tax return

17 which had been filed before. But, rather than file correct  
18 returns, the defendant filed returns showing that all of his  
19 income was zero, and he had zeros for all of his financial  
20 information, including adjusted gross income and taxable  
21 income. And the defendant attached a two-page statement  
22 saying that no section of the Internal Revenue Code  
23 establishes a tax liability.

24 You will hear from Deborah Swaney, a representative  
25 of National City Bank, who will testify regarding the bank

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1 accounts held by the defendant.

2 As part of her testimony, Miss Swaney will talk  
3 about the bank accounts and the deposits, and we will offer  
4 the bank account information into evidence. And you will  
5 learn that the defendant sent money to offshore accounts and  
6 that money, either in the form of checks or wire transfers,  
7 came back overseas into his bank accounts.

8 Robert Lapina, the Special Agent who investigated  
9 the case, will be here to tell you about his investigation.  
10 As part of his investigation, the IRS Criminal Investigation

11 Division executed search warrants on the defendant's home and

12 business. Numerous documents were seized.

13 Agent Lapina will introduce letters, faxes and

14 other documents from the defendant's co-conspirators,

15 Donald Turner and Paul Harris. These pieces of

16 correspondence were addressed to the defendant and provided

17 him with directions on how to implement the scheme to hide

18 his income from the government.

19 The faxes and letters began in mid-1991 and they

20 continued throughout the course of the conspiracy. And you

21 will learn from the evidence that the defendant acted on

22 those directions by setting up the bank accounts in the name

23 of Center Company, Leonard Adler and Box Adler, and that he

24 set up accounts both here and Pennsylvania and overseas and

25 that he moved income into these accounts to hide it from the

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1 United States.

2 The defendant set up bank accounts in the Turks and

3 Caicos Islands, which is part of the British West Indies

4 located in the Bahamas, set up bank accounts in the Grand

5 Cayman, which is another British West Indies island located

6 south of Cuba, and he set up an account at the Channel  
7 Islands, which is located off the coast of France in the  
8 English Channel. These islands are not any part of the  
9 United States.

10 Agent Lapina will also introduce faxed documents  
11 from the defendant to these overseas banks and they  
12 instructed banks to wire his money from one account to  
13 another.

14 For example, the defendant maintained a bank  
15 account in the name of Box Elder at Barclays Bank in the  
16 Turks and Caicos Islands and the defendant would send faxes  
17 to Barclays directing them to wire transfer money from his  
18 foreign account to an account here in this country so he  
19 could use the money.

20 And during the 1990's, you will see from these  
21 faxes that the defendant instructed his foreign banks to send  
22 a substantial amount of money back to his Center Company  
23 accounts in Pennsylvania and that he used the money.

24 You will learn also that the day after the  
25 indictment was announced, the defendant fled and he never



1 returned to the veterinary practice.

2 In addition to testimony, there will be paper.

3 Because this is a tax case, there will be a lot of paper.

4 To make it appear as if the sale was real,

5 defendant Donald Turner, Paul Harris and Jack Williams

6 created a lot of paperwork. You will see numerous letters

7 sent by Donald Turner, Paul Harris and Jack Williams and

8 others, and you will see the numerous faxes between them that

9 went throughout the length of the conspiracy.

10 And you will see letters that caution the defendant

11 not to keep any more than three month's worth of records in

12 his possession, that everything is to be kept secret. You

13 will notice that, just as the defendant used a lot of

14 different names, Turner and Harris also used different names.

15 They used the name First America Research, FAR,

16 American Security Trust, also known as ASTCO, Vericon and

17 Global Company. And while you will hear a number of names,

18 they all represent Turner and Harris and associates. And

19 Donald Turner later changed his name to

20 Don Wood.

21 You will see the contract which purports to sell

22 the veterinary practice. And you will see that the contract,  
23 itself, states that Donald Turner and Paul Harris had been  
24 United States Consultants for Center Company. And this  
25 documentation was created for the sole purpose of making it

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1 appear that the sale was legitimate, thus disguising the  
2 defendant's ownership.

3       You will also see the defendant's tax returns. The  
4 defendant told the IRS that in return for running this half a  
5 million dollar a year business, he was paid a salary. Center  
6 Company paid him a salary of \$5,000.00 for 1992, \$2,000.00  
7 for 1993, but the defendant's tax returns for 1994 and 1995  
8 reflect no wages at all. And meanwhile, the practice  
9 continued to flourish.

10       You will see tax organizers which the defendant  
11 filled out to provide to Turner and Harris so that they could  
12 prepare tax returns for Center Company. And you will have  
13 the opportunity to see tax returns filed by Center Company.  
14 And Center Company showed very little profit while the  
15 practice continued to earn in excess of \$500,000.00 a year.

16 Three facts are important to remember about Center

17 Company's returns:

18 The first fact is that all of the information used  
19 to prepare them came from the defendant. The defendant sent  
20 all of the tax information to Colorado to Turner and Harris.

21 The second fact that's important to remember is  
22 that while the gross receipts remained over \$500,000.00 a  
23 year, the profits of this veterinary business went way down.  
24 For 1994 and 1995, the profit of the veterinary clinic, which  
25 had been over \$100,000.00 a year, was now under \$10,000.00 a

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1 year.

2 And the third fact that's important to remember  
3 about Center Company's returns is that Center Company claimed  
4 to be a trustee which distributed all of the profits from  
5 Center Company to a foreign beneficiary which it called  
6 Newbury and, therefore, Center Company never paid any taxes  
7 on the profits of the veterinary practice.

8 You will also see a large volume of bank documents.  
9 And these bank documents will establish the amount of  
10 receipts that the practice earned and will also show the

11 transfer of money out to foreign accounts and back in from  
12 those foreign accounts.

13 At the end of the government's case, the government  
14 will call a summary witness, Kim Iddon, who will testify  
15 regarding the money that the veterinary practice received and  
16 what the voluminous documents show regarding the transfer of  
17 funds.

18 Miss Iddon will be in court throughout the entire  
19 case listening to all the testimony and reviewing all the  
20 evidence which is admitted.

21 You may be thinking that this is going to require  
22 you to interpret a convoluted or convoluted tax statute.  
23 This case will not require that. In a tax case, it's always  
24 very helpful to keep your eye on the money, and you will see  
25 that it was the defendant that earned this money. It was the

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1 defendant that controlled the money. It was the defendant  
2 who spent the money, and it was the defendant who had the  
3 obligation to declare these business receipts on his tax  
4 return and who failed to do so.

5           Although the defendant took numerous steps to  
6   deceive the Internal Revenue Service, he left a paper trail  
7   for us to follow, and this trail remains despite all of his  
8   efforts to hide it. This paper trail will tell you what the  
9   defendant did and why.

10           All of the transactions to the foreign accounts  
11   were a smoke screen. Despite the foreign bank accounts and  
12   the transactions that used those bank accounts, the funds  
13   sent abroad represent only a very small percentage of the  
14   money generated by the veterinary practice. The great  
15   majority of the money never left Meadville, Pennsylvania.

16           You will see over and over again that whether the  
17   receipts went abroad or whether the receipts stayed here in  
18   Pennsylvania, all of the veterinary receipts eventually went  
19   straight to the defendant.

20           At the close of the government's evidence, the  
21   United States will have an opportunity to review with you  
22   what the evidence has been and to discuss what this evidence  
23   proves, and you will be asked to rely on three things.

24           The first is the evidence, the testimony that you  
25   will hear, the documents that you see.

1        You will be asked, secondly, to rely on the law,  
2    and the law in this case will come only from Judge Cohill.

3        But, the third thing you will use in this case is  
4    your common sense. Each of you brings to this courtroom a  
5    lifetime of experiences which are uniquely your own. Your  
6    experiences will have taught you what is reasonable to  
7    believe and what is not reasonable to believe. And your  
8    common sense is going to lead you to the proper decision in  
9    this case.

10       At the end of the case, ladies and gentlemen, we  
11    will ask you to conclude that the defendant entered into a  
12    conspiracy to defraud the United States by impeding and  
13    impairing the lawful functions of the United States, and that  
14    Daniel Leveto willfully filed materially false income tax  
15    returns for the years 1994 and 1995.

16       At that time, ladies and gentlemen, we will ask you  
17    to return a verdict of guilty on Counts 1, 2 and 3 of the  
18    indictment.

19       Thank you for your attention.

20       THE COURT: Mr. Leveto, do you care to make an

21 opening statement?

22 MR. LEVETO: Yes, Your Honor. Good afternoon

23 members of the court, members of the jury.

24 You know, Your Honor, due to the sheer intimidation

25 of all of this -- I really believed that I could represent

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1 myself, but I seem to be having difficulties and mental

2 blocks, and I am asking you again to have an attorney

3 represent me.

4 THE COURT: This is not the time and place to make

5 a motion like this. I've already ruled that you have had

6 back-up counsel for some time and it's a little late to be

7 asking for more counsel now.

8 MR. LEVETO: Yes, Your Honor. I guess I will wait

9 until after the government's case.

10 THE COURT: Okay. Call your first witness.

11 MS. CALVIN: The government calls Mary Somma.

12 THE COURT: Come up here to be sworn, please.

13 THE CLERK: Can you raise your right hand?

14 \* \* \* \* \*

15 MARY SOMMA, having first been duly sworn, testified

16 as follows:

17 THE COURT: Would you have a seat up here, please,  
18 give us your name and spell your last name.

19 Try to speak -- that's good. Just speak right into  
20 that.

21 THE WITNESS: Okay. My name is Mary Somma. My  
22 last name is spelled S-o-m-m-a.

23 THE COURT: How do you spell your first name?

24 THE WITNESS: M-a-r-y.

25 THE COURT: I guess I didn't understand.

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1 THE WITNESS: Oh.

2 THE COURT: Before we start, I think I got to turn  
3 around this screen up here.

4 MS. CALVIN: Your Honor, may I approach the witness  
5 to provide her with a document?

6 THE COURT: I'm sorry?

7 MS. CALVIN: Your Honor, may I approach the witness  
8 to provide her with a document?

9 THE COURT: Sure. Okay, Ms. Calvin.



10 DIRECT EXAMINATION

11 BY MS. CALVIN:

12 Q Miss Somma, by whom are you employed?

13 A I'm employed by the Internal Revenue Service.

14 Q And is that an agency of the United States?

15 A Yes, it is.

16 Q And where is your place of employment?

17 A I'm employed at the Philadelphia Service Center in

18 Philadelphia.

19 Q And how long have you been so employed?

20 A Thirty-three years.

21 Q What are your present duties?

22 A I am the group witness coordinator for the Philadelphia

23 Service Center. And my duties are to secure information

24 documents and have them certified to be presented in court on

25 behalf of the Special Agent who is working the case.

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1 Q Where you a designated representative?

2 A I'm a designated representative of the commissioner,

3 yes.

4 Q And are you also a custodian of records?

5 A I am the custodian of records representing the  
6 commissioner.

7 Q Now, have you testified before?

8 A Yes, I have, many times.

9 THE COURT: I am having a little trouble hearing  
10 you, Ms. Calvin.

11 MS. CALVIN: I'm sorry. Is that better?

12 THE COURT: Much better. Thanks.

13 BY MS. CALVIN:

14 Q I believe I just asked you if you had been a witness at  
15 trial before?

16 A Yes, many times.

17 Q About how many?

18 A About two hundred times.

19 Q What geographical location does the Philadelphia Service  
20 Center cover?

21 A We take care of the states of Pennsylvania, Maryland,  
22 Delaware, Washington, D.C., Virginia, and foreign countries,  
23 foreign possessions.

24 Q And what does the Philadelphia Service Center campus do?

25 A We process returns, for the most part. We also process

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1 correspondence that comes in, but mainly returns.

2 Q And would you explain for us what you mean when you say  
3 you process returns, what that involves?

4 A Okay. When a return comes into the Service Center, when  
5 you mail your returns to be processed, they come into our  
6 Receipt Control Department, which is our Mail Department.  
7 From there, they are sorted and they are batched in batches  
8 of one hundred.

9 They are then taken out to our Returns Analysis  
10 area. They are then coded, and they are coded for input  
11 through our District Data Entry area. The documents are then  
12 taken back to Receipt and Control and they are numbered.

13 Each document is given its own document locator  
14 number in the upper right-hand corner of the return, and that  
15 number is then used for filing purposes and for securing the  
16 documents, as I did.

17 Q And were you asked to conduct a search for any records  
18 involving Daniel Leveto and Margaret Leveto?

19 A Yes, I was.

20 Q And would you explain to us how that search was

21 conducted and what you did?

22 A When we conduct a search looking for records, if it is  
23 on an individual, we use the Social Security number. The IRS  
24 system is built on numbers, and we have everything set up  
25 under either a Social Security number for individuals or an

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1 employer identification number for business type returns.

2 Q Now, you say employer identification number.

3 Is that what's none as EIN?

4 A Yes.

5 Q After the search was done, did you have the records  
6 certified?

7 A Yes. I always have the records certified.

8 Q You have in front of you a folder which has Government  
9 Exhibits 1-A through 8-D in front of you, and I would ask you  
10 to look at Exhibits 1-A through 1-Y for a moment.

11 A I have it.

12 Q Would you tell us briefly what are Exhibits 1-A through  
13 1-Y?

14 A I had the certified copies of the original returns that

15 were filed by -- let me get the right name -- Daniel and

16 Margaret Leveto.

17 Q For what period of time?

18 A These are for the years 1989 and up to and including

19 1998.

20 MS. CALVIN: Your Honor, at this time I would move

21 for admission of Government's Exhibits 1-A through 1-Y.

22 THE COURT: 1-A through 1-Y are admitted.

23 MS. CALVIN: If we could have just a moment to see

24 if we could get this screen working so that we could show

25 these. I apologize to the Court and to the members of the

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1 jury. This was working earlier, but I'll move on and we'll

2 just talk about them until we can show them. All right.

3 Q Looking at Government Exhibit 1-A, what is Government

4 Exhibit 1-A?

5 A Exhibit 1-A, this is an original copy of the income --

6 the Individual Income Tax Return for the year 1989 in the

7 name of Daniel and Margaret Leveto.

8 Q And I would ask you to look and see if it has a

9 Schedule C attached to it?

10 A Yes, there is.

11 Q And what is a Schedule C?

12 A A Schedule C is a schedule -- that a person who has a  
13 sole proprietorship or a -- is able to show the profit and  
14 loss of his business, and they attach this to the 1040 and  
15 then they take their gain or loss on the front of their 1040  
16 return.

17 Q And when they take the profit or loss from the  
18 Schedule C, from their business, and put it on the front,  
19 where would that go?

20 A It would go on the line in the middle here of the 1040.  
21 That is -- in this case here, it would be line twelve,  
22 business income or loss from the Schedule C.

23 Q And looking at that tax return, how much in gross  
24 receipts did that practice generate?

25 A The gross receipts were \$531,572.00.

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1 Q And the profit?

2 A And the profit was \$137,058.00.

3 Q And that figure was transferred then to the front of the

4 tax return?

5 A The 137,000 was transferred to the front.

6 Q Looking at 1-B-1. What is Government Exhibit 1-B-1?

7 A This is a certified copy of an original income tax

8 return for the year 1990 in the name of Daniel and Margaret

9 Leveto.

10 Q Does that tax return have a Schedule C?

11 A Yes, it does.

12 Q And looking at that Schedule C for that business, I

13 didn't ask you the last time, what is that business?

14 A Veterinarian.

15 Q And does it have a business name?

16 A Langdon and Leveto.

17 Q And a business address?

18 A 316 -- I would say it's Conneaut Lake Road, Meadville,

19 Pennsylvania.

20 Q And what were the profits of the business that year?

21 A The gross receipts or the profits?

22 Q Well, gross receipts and profits.

23 A Okay. The gross receipts were \$567,185.00, and the net

24 profit was \$176,969.00.

25 Q I would ask you to look at what is Government

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1 Exhibit 1-C-1.

2 A Okay. This is an original copy of the Individual Income  
3 Tax Return for the year 1991 in the name of Daniel and  
4 Margaret Leveto.

5 Q And does this tax return have a Schedule C?

6 A Yes, it does.

7 Q And in this Schedule C for the Langdon and Leveto  
8 veterinarians, what are the gross receipts and profits for  
9 that year?

10 A The gross receipts are \$404,127.00, and gross -- the net  
11 profit was \$142,121.00.

12 Q Now, I would ask you to look at what's been marked as  
13 Government's Exhibit 1-C-2. What is that?

14 A This is an original copy of an Amended Individual Income  
15 Tax Return for the year 1991 in the name of Daniel and  
16 Margaret Leveto.

17 Q Now, this amended return was received by the Internal  
18 Revenue Service when?

19 A This was received in September of 1997.



20 Q And this tax return, amended tax return, do you have to

21 put a reason why you are amending your tax return?

22 A Yes.

23 Q And what reason is given for amending this tax return?

24 A The reason given was:

25 The 1040 form fraudulently induced me to report

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1 sources of income as income itself.

2 The Privacy Act notice fraudulently induced me into

3 believing that I had an income tax liability citing

4 Section 6001, 6011 and 6012.

5 The Privacy Act notice, by law, was supposed to

6 tell me if filing was voluntary or mandatory. Instead, it

7 cited Sections 6001, 6011 and 6012 which neither establishes

8 return information as voluntary or mandatory under the law.

9 Q And what changes did this tax return reflect?

10 A The reflection shows that all income that was originally

11 reported, it was all zeroed out.

12 Q When you say "it was all zeroed out," what do you mean

13 by that?

14 A It was minused out to reflect zeros.

15 Q And that includes the adjusted gross income, deductions?

16 A Everything.

17 Q And did it request a refund?

18 A Yes. As a result, it was requesting a \$30,500 --

19 \$30,559.00 refund. This would have been all the tax,

20 estimated tax, whatever, that had been originally paid.

21 Q I would ask you to look at Government Exhibit 1-D-1.

22 A Okay.

23 Q What is Government Exhibit 1-D-1?

24 A This is a copy of an Individual Income Tax Return for

25 the year 1992 in the name of Daniel and Margaret Leveto.

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1 Q And does this tax return have a Schedule C?

2 A No, it does not.

3 Q Does it show him to be a W-2 wage earner?

4 A Yes, it does.

5 Q And how much in wages?

6 A \$5,000.00 are reported in wages.

7 Q And where do those wages emanate from according to his

8 tax return?

9 A Where did they come from, you said?

10 Q Yes.

11 A There is a copy of an attached W-2, yes, and it's

12 showing Center Company doing business as Langdon and Leveto

13 Veterinary, \$5,000.00 in wages.

14 Q And were there any taxes owed for this year?

15 A There was an assessment of \$4,050.00, and then there was

16 a tax of \$3,425.00 owed.

17 Q And I would ask you to look at Government Exhibit 1-D-2.

18 A Okay. What we have here is an Application for Tentative

19 Refund. It's a copy -- a certified copy for the year 1992 in

20 the name of Daniel and Margaret Leveto.

21 Q And 1-D-3. What is 1-D-3?

22 A Okay. This is an original certified copy of an Amended

23 Individual Income Tax Return for the year 1992 in the name of

24 Daniel and Margaret Leveto.

25 Q And what is the amendment that's made to this tax

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1 return?

2 A I'm sorry?

3 Q What is amended on this tax return, which items?

4 A Would you like me to read the reasons for the amended  
5 return?

6 What is amended are, all the figures -- again, all  
7 the figures are zeroed out. They are all taken out.

8 Q And does it give the same reason for this return as it  
9 did the last one?

10 A Yes, it does.

11 Q And does this one ask for a refund?

12 A Yes, there is a refund. \$3,425.00.

13 Q Looking at Government Exhibit 1-E-1. What is that  
14 document?

15 A This is a certified copy of the Individual Income Tax  
16 Return for the year 1993 in the name of Daniel and Margaret  
17 Leveto.

18 Q Does this return have a Schedule C?

19 A No. No Schedule C.

20 Q And how much in adjusted gross income does he have for  
21 this year?

22 A \$25,355.00.

23 Q And how much of that is the result of wages paid to him?

24 A There were \$2,000.00 paid in wages.

25 Q I would ask you to look at Government Exhibit 1-E-2.

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1 What is 1-E-2?

2 A This is an original copy of an Amended Income Tax Return  
3 for the year 1993 in the name of Daniel and Margaret Leveto.

4 Q Now, what is the reason for amending this return?

5 A The reason for amending the 1993 income tax return is  
6 overstatement of income in error and misunderstanding.

7 And then it goes on to say: See the attachment  
8 which is integral part of this amended return.

9 Q And is there an attachment to this?

10 A The attachment to this is correspondence -- typed  
11 correspondence, two pages of it.

12 Q And have you seen correspondence like this before?

13 A Many times. Back at this period of time, these years,  
14 there were many returns that were processed through the  
15 Service Center that had this type of correspondence attached.  
16 Yes.

17 Q And is this -- again, what was the amendment here?

18 A Again, all the figures were zeroed out.

19 Q I would ask you to look at Government Exhibit 1-F-1.

20 A This is an original copy of the Individual Income Tax

21 Return for the year 1994 for Daniel and Margaret Leveto.

22 Q And does this tax return have a Schedule C?

23 A No. No Schedule C.

24 Q Any wages?

25 A I'm sorry?

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1 Q Any wages?

2 A No wages.

3 Q What's the adjusted gross income here?

4 A The adjusted gross income is \$24,130.00.

5 Q Now, I want to ask you if this tax return has a

6 Schedule B attached to it?

7 A Yes, it does.

8 Q And would you explain to us what Schedule B is asking

9 for in Part III?

10 A In Part III, the Schedule B is asking for us -- for the

11 taxpayer to check off if there are any foreign accounts or

12 trusts that he may be involved with.

13 Q Specifically, what's the language of 11a?

14 A At any time during 1994, did you have an interest in or  
15 a signature or other authority over a financial account in a  
16 foreign country, such as a bank account, securities account,  
17 or other financial account?

18 And then it asks you -- it tells you about the  
19 exceptions to this particular statement. And that would be  
20 if you were involved in the military and you had a bank in a  
21 foreign country that was on a military base, you would not  
22 have to check this off.

23 But, other than that, you should be checking it  
24 off, yes.

25 Q And what did the defendant tell the IRS regarding

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1 whether he had any signature authority over a bank account in  
2 1994?

3 A He said no.

4 Q I would like you to look at Government Exhibit 1-F-2.

5 Okay?

6 A Okay.

7 Q What is 1-F-2?

8 A This is a copy of an Amended Individual Income Tack

9 Return that was certified, and it's for the year 1994, and

10 it's for Daniel and Margaret Leveto.

11 Q And does it give the same reasons for amending it?

12 A Yes, it gives the same reason as the last one.

13 Overstatement of income in error and misunderstanding, along

14 with the correspondence attached, which are two pieces of

15 typed information, and it zeros out the return.

16 Q Everything on there is zeroed?

17 A Everything is zeroed out.

18 Q I ask you to look at Government Exhibit 1-G-1.

19 What is Government Exhibit 1-G-1?

20 A This is a copy of the original Individual Income Tax

21 Return for the year 1995 for Daniel and Margaret Leveto.

22 Q Is there a Schedule C here?

23 A No, there is not.

24 Q Does he declare any wages for this year?

25 A No wages.

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1 Q And what is his adjusted gross income?

2 A \$23,940.00.



3 Q Now, does this tax return have a Schedule B?

4 A Schedule B?

5 Q Yes.

6 A Yes, it does.

7 Q And does Part III ask about foreign accounts?

8 A Yes. It asks the same question, only this time it's

9 asking about during the year 1995, rather than '94, and it

10 mentions foreign accounts. And, again, it's checked off no.

11 Q I would ask you to look at 1-G-2. What is 1-G-2?

12 A 1-G-2?

13 Q Yes. 1-G-2.

14 A Okay. This is an original copy of an Amended Individual

15 Income Tax Return for the year 1995 and it's in the name of

16 Daniel and Margaret Leveto.

17 Q And did he give the same reason for amending this

18 return?

19 A Yes. It's giving the same reasons as he did for the

20 other returns, the 1994 and '93, overstatement of income in

21 error and misunderstanding, along with the attached

22 correspondence, and he has zeroed out the return completely.

23 Q I would ask you to look at Government Exhibit 1-H-1.

24 What is Government Exhibit 1-H-1?

25 A Okay. We have a copy -- a certified copy of the

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1 Individual Income Tax Return for the year 1996 and this is in

2 the name of Daniel J. Leveto.

3 Q And the filing status here?

4 A The filing status is married, filing separate.

5 Q And how much does he declare in wages this year?

6 A Zero.

7 Q And is it zero on the tax return?

8 A It's says zero on the tax return.

9 Q And taxable refunds? Any income whatsoever on this

10 return?

11 A No. This return is a complete return with nothing but

12 zeros. And then attached is the same correspondence that was

13 on the amended returns.

14 Q Okay. What is Government Exhibit 1-H-2?

15 A This is an original copy of the Individual Income Tax

16 Return for the year 1996 for Margaret A. Leveto.

17 Q I am going to ask you to look at 1I. And what is 1I?

18 A Okay. This is an original copy of the Individual Income

19 Tax Return for the year 1997 in the name of Daniel J.

20 Leveto.

21 Q And are there markings on that that were put on there by  
22 the Internal Revenue Service?

23 A Yes, there are some markings. They do this in Returns  
24 Analysis when they bring the returns out. In this case, they  
25 were putting on the markings as far as exemptions, and so

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1 forth, and filing status.

2 They also have on here information that they took  
3 from an attached W-2 since it was not provided by the  
4 taxpayer himself.

5 Q And so the line that shows the wages, was put on there  
6 by the Internal Revenue Service?

7 A Yes.

8 Q And how is it that you can tell that?

9 A Well, mainly I can tell from the handwriting, the  
10 handwriting being the same as that which is edited at the  
11 top, and the zeros that are on here are quite different.

12 But, it's -- if it's the original return, it would  
13 probably show -- to be quite honest with you, it would be

14 showing up more in red because we do the editing in red.

15 Q Okay. I ask you to look at 1J. What is 1J?

16 A This is the Individual Income Tax Return. It's an

17 original copy certified for the year 1998 in the name of

18 Daniel J. Leveto.

19 Q And what does this tax return show, as far as income,

20 adjusted gross income, payments, taxes?

21 A Zeros.

22 Q Anything other than a zero on any of those lines?

23 A Zeros.

24 Q Okay. Now, Miss Somma, were you also asked to look and

25 find tax returns for Center Company?

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1 A Yes.

2 Q And how did you search for those tax returns?

3 A Again, now they are different because this is a

4 business. So, I had to search through employer

5 identification number, or the EIN that was mentioned earlier.

6 Q And what are Government Exhibits 2A through 2J?

7 A These are the certified returns -- copies of returns for

8 Center Company.

9 Q And those are all certified, Exhibits 2A through 2J?

10 A Yes.

11 MS. CALVIN: Your Honor, we would move for

12 admission of 2A through 2J?

13 THE COURT: 2A to 2J?

14 MS. CALVIN: Yes, 2A to 2J.

15 THE COURT: 2A to 2J are admitted.

16 BY MS. CALVIN:

17 Q Looking at Government Exhibit 2A. What is Government

18 Exhibits 2A?

19 A This is a certified copy of a Nonresident Alien Income

20 Tax Return for the year 1991 in the name of Center Company.

21 Q And where does it say it's located?

22 A This is located in the Caicos Islands, the Grand Turk,

23 Turks and Caicos Islands, British West Indies.

24 Q And does this have a Schedule C?

25 A Yes, it does.

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1 Q And what kind of a company is Center Company here?

2 A Center Company is a veterinary hospital and it's located

3 in Meadville, Pennsylvania.

4 Q And the street address?

5 A 316 -- I don't know if I am saying this right or not.

6 I'm sorry. I am saying Conneaut -- Conneaut Lake Road.

7 Q I believe it's Conneaut Lake Road.

8 A Oh, I apologize to the people that live there.

9 Conneaut. Okay.

10 Q How much in gross receipts?

11 A Gross receipts were \$258,560.00.

12 Q And the profit?

13 A And the net profit was \$33,470.00.

14 Q Now, did this company pay any tax?

15 A No. No tax.

16 Q And what did they claim that they did with the money?

17 A Well, the money was brought forth onto the 1040 NR under

18 the Schedule C, and then there was a loss on the Schedule D

19 of \$2,082.00.

20 But, the main distribution of the money was from a

21 Schedule K-1, or a 1041, and distribution to a beneficiary

22 was a loss of \$31,663.00 which, in turn, then there was no

23 adjusted gross income. There was no tax.

24 Q And from what company to what company on the

25 Schedule K-1 does it show that the money transferred?

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1 A Okay. The money is going from Center Company to ASTCO,

2 Limited, and from there their beneficiary is ABCO, A-B-C-O,

3 and these are all located in the Grand Turk, Caicos Islands.

4 Q Looking at Government Exhibit 2B. What is 2B?

5 A Okay. I have an original copy of a Nonresident Alien

6 Income Tax Return in the name of -- it's ASTCO, Limited,

7 Trustee for Center Company for the year 1992.

8 Q And did this company file a Schedule C?

9 A Yes. Yes, it did. It was ASTCO, Limited, Trustee for

10 Veterinary Clinic, Center Company, and it's at Conneaut -- am

11 I saying it right? -- 316, okay, Conneaut Lake, Lamar --

12 RD762, Lamar Street, Meadville, Pennsylvania.

13 Q What were the gross receipts of this company?

14 A The gross receipts were \$618,869.00.

15 Q And the profit?

16 A \$12,711.00.

17 Q Now, did the business pay any tax on this income?

18 A The business, no, but there was money withheld in source

19 with the sale of some kind of property, or whatever. And so

20 that was a tax that was withheld at the time.

21 Q Looking at that particular return, are there attachments

22 on this Form 8288-A which will tell you where the money was

23 withheld?

24 A Yes.

25 Q And where was money withheld that year?

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1 A There was money withheld -- okay. The first one --

2 let's go right to the first one.

3 The first one, it was in the amount of \$14,000.00.

4 This was a Statement of Withholding on Dispositions by

5 Foreign Persons of U.S. Real Property Interests. There is

6 money that was withheld by M.C.F. Land Corporation for Center

7 Company.

8 Q And was there a second one?

9 A And then the second one was for the amount of \$1,581.70,

10 same thing, by Center Company, and it was withheld by Watts

11 and Pepicelli PC.

12 Q When you say these are Statements of Withholding



13 Dispositions by Foreign People of U.S. Real Property, what do

14 you mean by "real property"?

15 A What do I mean by "real property"?

16 Q Yes.

17 A These were benefits and parts of profits that were owned

18 by Center Company and the tax then is withheld as source by

19 the foreign company prior to then being paid over to the

20 United States by us, and they would either pay us for it at

21 the end of the year, if need be, and it would be returned if

22 there is no tax.

23 Q And what happened to this particular sum?

24 A This money was returned to the taxpayer. There was a --

25 what they call a manual refund. And in accounting, in our

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1 department, they have a receipt and they write a check and

2 they send it to the company or to the person, whoever it is

3 intended for, I should say.

4 Q And did they request this refund?

5 A They don't have to request it. If they are entitled to

6 it, whether there is no tax due and owing according to their

7 paperwork, it would be sent to them.

8 Q Can you tell from the tax return whether that happened

9 here?

10 A There is a stamp marked on the return of a manual

11 refund, and the refund that was issued, plus interest of

12 \$226.42, and this was scheduled to go out on January 29th,

13 1993.

14 Q And I ask you to look at Government Exhibit 2C, please.

15 A Okay. This is a certified copy of a Nonresident Alien

16 Return for the year 1993, and this is in the name of Center

17 Company. And then in parens, it's Vericon, Limited, Trustee,

18 and the address is the Caicos Islands.

19 Q And does this tax return have a Schedule C?

20 A Yes. Yes, it does.

21 Q How much in gross receipts were they making in this

22 year, 1993?

23 A \$553,535.00.

24 Q And what was their profit?

25 A \$7,948.00.

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1 Q Did they pay any tax that year?

2 A There was a 1042, which is money that is withheld as  
3 source again, a tax of \$97.00, and that was not paid by the  
4 taxpayer, per se. It was money that was held due to the  
5 foreign transaction and refunded back to the taxpayer because  
6 there was no tax.

7 Q Looking at the K-1, what happened to the profit of the  
8 company?

9 A The K-1 was also now another distribution that was -- do  
10 you want me to give the -- okay. I have it here.

11 It was Center Company going through Vericon and the  
12 trustee and they were distributing the monies through  
13 Newbury. This is another trust. And this money then was  
14 transferred to them.

15 Q And they are located?

16 A They are also located in Grand Turk, Turks and Caicos  
17 Islands in the British West Indies.

18 Q Looking at Government Exhibit 2D --

19 A Okay.

20 Q -- what were the gross receipts -- I'm sorry. What is  
21 2D?

22 A This is a certified copy of a Nonresident Alien Return  
23 in the name of Center Company for the year 1994.

24 Q And what were the gross receipts and the profits for

25 Center Company for 1994?

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1 A Are you talking about the Schedule C?

2 Q From the Schedule C.

3 A From the Schedule C, being Center Company, and the gross

4 receipts were \$547,265.00 and the profits were \$6,481.00.

5 Q Are you talking about the net profit?

6 A This is the net profit I'm talking about, yeah.

7 Q Now, what is the address of Center Company?

8 A Center Company's other address has now become

9 388 Edgewood Drive, Meadville, Pennsylvania.

10 Q I would ask you to look at Government Exhibit 2E. No.

11 I'm sorry.

12 What did they do with any profits they earned that

13 year -- I am sorry. I should have asked you -- the 1994

14 year?

15 A With the profits?

16 Q Yes.

17 A The profits were then distributed as the others were.

18 Center Company distributed these through Vericon as a trustee

19 and these were distributed to Newbury.

20 Q Thank you. Now I will ask you to look at 2E.

21 A Okay. This is a certified copy of a Nonresident Alien

22 Return for the year 1995 for Center Company.

23 Q And off of Schedule C, what do you see for profits and

24 gross receipts for the year 1995 for Center Company?

25 A Just the profits? Net profit?

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1 Q Gross receipts.

2 A Gross receipts were \$581,824.00, and the net profit was

3 \$5,256.00.

4 Q What did they do with the profit in this year, 1995?

5 A Okay. They also then had a distribution through the

6 1041 of \$14,277.00, and this was distributed from the K-1 as

7 the other was. This went from Center Company through Vericon

8 to Newbury.

9 Q Thank you. Okay. I would ask you to look at

10 Government Exhibit 2-F-1. What's 2-F-1?

11 A What this is showing us here, that in the year 1996,

12 Center Company did not file any type of Nonresident Alien

13 Return as they had earlier in the prior years. There was no  
14 record of a return.

15 Q Okay. Would you just describe briefly the process that  
16 you go through when you are looking for a return and you  
17 don't find one and so that you certify that there is no  
18 record?

19 A Well, in this case, we are looking at something a little  
20 bit different than the norm because I keep talking about a  
21 Nonresident Alien type return which is normally a 1040 type  
22 or 1040 NR.

23 But, I am searching through the employer  
24 identification number and these accounts are all kept and  
25 maintained on what we call a nonresident file. And the

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1 reason for that is because it's a business using an  
2 individual type return. There is nothing wrong with that,  
3 but because they are using it as a fiduciary or trust, but  
4 they are not able to place that on our normal master file  
5 because of the difference of an EI versus an individual type  
6 form, they are not compatible.

7 So, when I was doing my research, I would research

8 -- I did research through the regular BMF tapes of --

9 business master tapes. But, then I did go back, of course,

10 through nonmaster file, nonmaster file because that's where

11 all the others had been filed.

12 I wanted to make sure when I am saying there is no

13 record, that there is no record, and that's what I was doing.

14 Q Now, you are attached to a particular Service Center.

15 Now, when you say you do a search and you determine

16 that there was no record of a tax return filed, do you search

17 other Service Center records as well to determine that it

18 wasn't filed in Atlanta or some place?

19 A Well, when I do a search, the way our system is set up

20 today versus how it was ten years ago, we have national

21 access. So, when I am searching through our master file, it

22 is already going out through the whole country.

23 And doing this research, the nonmaster file is a

24 little bit different but, fortunately, Philadelphia is the

25 only Service Center that handles anything that has a foreign

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1 address.

2 So, even if it were filed in another Service

3 Center, they would have to give it to us to process. So, I

4 only had to search the Philadelphia nonmaster file.

5 Q What is 2-F-2?

6 A 2-F-2 is, again, is part of the research. I am now

7 saying that there was no 1040 NR, that was the first time no

8 record. And this one is also saying that I had no record of

9 a 1996 return or nonmaster file. It was just probing both

10 sides of the copy.

11 Q What is 2-G?

12 A 2-G is a certified copy of a Nonresident Alien Return

13 for the year 1997 for Center Company.

14 Q And does this one have a Schedule C?

15 A Yes.

16 Q And what does that reflect?

17 A The Schedule C reflects it's for Center Company, and

18 it's showing \$564,649.00 in gross receipts, and \$30,778.00 as

19 net profit.

20 Q And what happened to this net profit?

21 A This profit was also then redistributed through the

22 1041, or the K-1 from the 1041 to another trust, and



23 explaining that it was Center Company and now it's going  
24 through the Trawg Consulting Services, which are also in the  
25 Grand Turk Islands, and this was going to Newbury, which is

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1 in the Grand Turk Islands.

2 Q 2-H?

3 A Okay. We have a certified copy of the Nonresident Alien

4 Return for the year 1998 in the name of Center Company.

5 Q And what does that return reflect, as far as profits,

6 gross receipts, and what happened to those profits?

7 A This one is coming in -- it says Center Company owns a

8 small animal care clinic, and the gross receipts were

9 \$546,847.00. And there were no profits. \$4,705.00 loss.

10 Q I am going to ask you to skip over to I -- 2-I and 2-J,

11 which are in evidence, and look at 3-A.

12 THE COURT: Excuse me. This might be a good spot

13 to take a break. So, we'll recess until four-fifteen.

14 MS. CALVIN: Thank you, Your Honor.

15 (Court recessed at 4:00 p.m.)

16 (Court reconvened at 4:15 p.m.)

17 THE COURT: Be seated, please. We have -- the

18 projector is now working. That angle is not very good. Can  
19 the people at this end see that screen up there? Is that  
20 okay now? All right.

21 MS. CALVIN: I'm not seeing anything up there on  
22 the screen at the moment.

23 BY MS. CALVIN:

24 Q I will come back to this exhibit in just a moment,  
25 Miss Somma. But, right now, I would like you to look at

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1 Exhibits 3-A through 3-D.

2 THE COURT: Can't you get it going? Okay.

3 MS. CALVIN: Thank you.

4 Q What are those exhibits, Miss Somma?

5 A We have the Nonresident Alien Income Tax Returns for  
6 Newbury.

7 Q For what time period?

8 A 1992 and 1993 and 1994 and 1995.

9 MS. CALVIN: We would ask for Government Exhibits  
10 3-A through 3-D to be admitted into evidence, Your Honor.

11 THE WITNESS: I have one for 1997 also. I'm sorry.

12 THE COURT: You are offering them, Ms. Calvin?

13 MS. CALVIN: Yes, Your Honor.

14 THE COURT: 3-A through -- is it through 3-H-2, is

15 that your last one on this series?

16 MS. CALVIN: I offered 3-A through 3-D, but I can

17 ask also what are exhibits 3-F, 3-G-1, 3-G-2, 3-H-1 --

18 THE COURT: 3-A through 3-D are admitted.

19 MS. CALVIN: Thank you. I would like to --

20 THE COURT: Oh, nice picture of your hands on

21 there.

22 MS. CALVIN: Well, it works. I would like to go

23 back for a moment to Government Exhibit 2-J and just talk

24 about that so we can take a look at what the tax return

25 actually looks like. What is 2-J?

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1 A Wait a minute. I don't have it.

2 Okay. This is a certified copy of a Nonresident

3 Alien Return Income Tax Return for the year 2000 for Center

4 Company.

5 Q And does this have a Schedule C?

6 A Yes, it does.

7 Q And what does it show that the gross receipts are for

8 that year?

9 A \$515,207.00.

10 Q With a profit of?

11 A With a loss of \$10,815.00.

12 Q Now, looking at this tax return, did they pay any taxes

13 this year?

14 A No.

15 Q Any K-1 distributions?

16 A The K-1 distribution, there was a loss of \$645.00.

17 Q Okay. Thank you. Now, I'm going to 3-A, the three

18 series. Sorry to jump around on you that way.

19 I would ask you to look at what Government Exhibit

20 3-A is?

21 A Okay. This is a certified copy of a Nonresident Alien

22 Income Tax Return for the year 1992 in the name of Newbury

23 Trawg Trust Company, Trustee.

24 Q And does it show that it received a distribution?

25 A Yes. It showed that there was a distribution from the

1 1041. It showed a loss, not a gain, of the distribution.

2 Q What did they do with it?

3 A This money was distributed from Newbury through the  
4 trustee, Trawg Trust Company, to Lac La Hache in the Caicos  
5 Islands.

6 Q All in the Turk --

7 A I am sorry?

8 Q I'm sorry. Did you say it was all in the Turk, Turks  
9 and Caicos Islands?

10 A Grand Turk, Turks and Caicos Islands.

11 Q Was any tax then paid by Newbury?

12 A No. No tax.

13 Q Okay. What is 3-B?

14 A This is a certified copy of a Nonresident Alien Income  
15 Tax Return in the year -- for the year 1993 in the name of  
16 Newbury.

17 Q Did Newbury pay any tax that year?

18 A There was no tax paid.

19 Q What does this tax return show where Newbury got its  
20 money and what they did with it?

21 A Well, it showed that the money was a distribution,  
22 again, to the K-1 of the 1041 to the beneficiary, but in this

23 case, again it was a loss, and it was a loss of \$10,105.00.

24 Q What is 3-C?

25 A This is a certified copy of a Nonresident Alien Income

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1 Tax Return for the year 1994 and in the name of Newbury.

2 Q And what does this tax return reflect so far as any

3 income --

4 A The income --

5 Q -- reported and tax due and owing?

6 A Okay. There was no tax paid, there was no tax owed and,

7 again, the distribution from the K-1 form 1041 to the

8 beneficiary was a loss of \$9,664.00.

9 Q And looking at the K-1, where did the money go from

10 Newbury to?

11 A It went through -- from Newbury through the consulting

12 service, Trawg Consulting Services to Lac La Hache.

13 Q And they are located where?

14 A Turks and Caicos Islands.

15 Q 3-D.

16 A This is also a certified Nonresident Alien Return for

17 the year 1995 in the name of Newbury.

18 Q What does this tax return reveal about Newbury's money  
19 and what they owed?

20 A There is no tax due and owing on Newbury. Again, there  
21 was a distribution to the 1041 of the K-1 to the beneficiary  
22 and there was a loss of \$14,277.00. And the beneficiary was  
23 Lac La Hache.

24 Q What is 3-F?

25 A This is a certified copy of a Nonresident Alien Income

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1 Tax Return for the year 1997 in the name of Newbury.

2 Q How much money did Newbury get?

3 A The only thing that is declared here is the K-1  
4 distribution from the 1041 and it's a loss of \$32,500.00.

5 Q What does this tax return tell you about that  
6 thirty-two, that K-1 distribution?

7 A Again, this is Newbury and now this one is going through  
8 Finance Global, Limited as their trustee. And the  
9 distribution is going to -- or the loss of, I should say, is  
10 Tabliqui, T-a-b-l-i-q-u-i. Tabliqui.

11 Q From Newbury to these --

12 A Yes. And these are located in the Turks and Caicos

13 Islands.

14 Q What is 3-G-1?

15 A We have here a Certification for a Lack of Record for

16 Newbury Company for the year 1998. In other words, we have

17 no record of a 1040 NR, or anything, listed for this company.

18 Q And 3-G-2?

19 A In 3-G-2, we also have a Certification for Lack of

20 Record for the year 1998 for Newbury Company. And, again,

21 there is no 1040 NR or nonmaster file, that there is no

22 record of any filing -- and coming out of Caicos.

23 Q What are 3-H-1 and 3-H-2?

24 A 3-H-1 and 3-H-2 is the same, lack of records for the

25 year 1999. And 3-H-2 is also the lack of records for the

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1 year 1999, reflecting both the 1040 NR and the nonmaster

2 file, that there is no record of any filing for Newbury.

3 Q I would ask you to look at Government Exhibits 5-A

4 through 5-M. What's that?

5 A Okay. I have 5-A through 5-M.



6 Q What are those documents?

7 A Pardon?

8 Q What are those documents?

9 A These are certified transcripts of Certificates of

10 Assessments and Payments and any other matters that pertain

11 to the history of the taxpayer's account.

12 This is information that we would take from the

13 taxpayer's return and we would put it onto our permanent

14 tapes.

15 Q And what taxpayer does this concern?

16 A This is for the year 1989 in the name of Daniel and

17 Margaret Leveto.

18 Q Generally, what does the five series -- what is the five

19 series?

20 A What is the what series?

21 Q 5-A through M.

22 A Oh. We're dealing here with, again, like I said, the

23 history of the taxpayer's account, and it's for the years

24 1989, and this will go up to and including the year 2000.

25 And, again, this is in the name of Daniel and

1 Margaret Leveto. And towards the end, it will become just

2 Daniel Leveto.

3 MS. CALVIN: Your Honor, we move for the admission

4 of Government Exhibits 5-A through 5-M.

5 THE COURT: 5-A through 5-M are admitted.

6 Q What kind of information would be reflected on this

7 Certificate of Assessments and Payments in, as you describe

8 it, the history of the taxpayer?

9 A Well, what it would give you basically would be the

10 figures that were reflected on the 1040, like when you

11 prepare your return, figures that you put onto your return

12 would then be taken from the return itself and put through

13 our data entry onto the tapes in the Computer Center so that

14 they have a permanent record.

15 Now, these would just be the figures of when the

16 return was filed, the adjusted gross income on that return,

17 if you had any estimated payments, if you owed and paid a

18 balance due, or if you received refunds, things of that

19 nature.

20 Q Now, if a person files a tax return for one year and it

21 turns out that there is an adjustment made in a later year,

22 or it turns out that they owe more and they pay, is that

23 what's reflected on one of these?

24 A It can be reflected, yes, if there is an adjustment to

25 an account, certainly. It's the whole history. Even if it

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1 comes at a later time, it will reflect back to the year of

2 the adjustment.

3 Q I would ask you to look at Government Exhibit 5-E, if

4 you could, please. I'm sorry. 5-F.

5 A F?

6 Q 5-F. What is Exhibit 5-F?

7 A This is a Certificate of Assessment and Payments in the

8 name of Daniel and Margaret Leveto for the year 1994, and

9 it's telling me this concerns the Individual Income Tax

10 Return, this 1040, and it will tell me in this case that

11 there was a return filed and has a document locator number

12 which shows me or indicates that, yes, there was one filed,

13 but it also shows that there was no monies on the return, no

14 figures.

15 Q Okay. And what about 5-G? What is 5-G?

16 A 5-G is the same. It's in the name of Daniel and

17 Margaret Leveto. It's a Certificate of Assessment and  
18 Payments for the year 1995 concerning their individual income  
19 tax return. It shows that the return was filed, and again  
20 there is a document locator number, too, and it also shows  
21 that it was a zero return.

22 In addition, it's telling me that there was an  
23 amended return filed as well, which was also zero.

24 Q Okay.

25 A So, this is the information that would have been taken

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1 from those returns, I was indicating before, that said zeros,  
2 all zeros, and these are zero returns.

3 Q Okay. I would ask you to look at what are Government  
4 Exhibits 6-A through 6-E, and 7-A, A and B. What are those  
5 documents?

6 A Okay. The 6-A through 6-E, these are the Certificates  
7 of Assessment and Payments, and these are in the name of  
8 Center Company.

9 MS. CALVIN: Your Honor, we would move for  
10 admission of Government Exhibits 6-A through 6-E and

11 Government Exhibits 7-A and B.

12 THE WITNESS: That reflects the same, yes.

13 THE COURT: Yes. You said -- I thought you said

14 just 6-A and B. You don't want 6-D and E at this time?

15 No. 6-A through E. Through 7-B?

16 MS. CALVIN: And 7-A, 7-B.

17 THE COURT: I want to make sure I have it right.

18 6-A, B, plus C, D and E?

19 MS. CALVIN: C, D and E and 7-A and B.

20 THE COURT: Okay. They are admitted.

21 BY MS. CALVIN:

22 Q And what are those, did you say?

23 A These are the Certificates of Assessment and Payments.

24 They are certified showing the history of the taxpayer,

25 Center Company. This is the information that we had stored

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1 on tape for them.

2 MS. CALVIN: Are those admitted, Your Honor?

3 THE COURT: Yes.

4 Q I'd ask you to look through all of those and answer

5 whether or not Center Company ever paid any taxes?

6 A No.

7 Q Okay. I would ask you to look at A and B, at 7-A and B,  
8 and see whether or not ASTCO, as trustee for Center Company,  
9 ever paid any taxes?

10 A You are saying 7-A and 7-B?

11 Q Yes.

12 A It's Center Company. Okay. But, there is no tax paid.

13 Q And I would ask you to look at Government Exhibits 8-A  
14 through 8-D.

15 A Okay. These are certified transcripts of Certificates  
16 of Assessment and Payments in the name of Newbury, Trawg  
17 Trust Company, Limited, Trustee, for the years 1992 through  
18 and including 1995.

19 MS. CALVIN: Your Honor, we would move for  
20 admission of Government Exhibits 8-A through 8-D.

21 THE COURT: 8-A, B, C and D are admitted.

22 Q And looking through those Certificates of Assessment and  
23 Payments for Newbury, did Newbury ever pay any taxes?

24 A No.

25 MS. CALVIN: Your Honor, I have no further

1 questions of this witness.

2 THE COURT: Cross-examine.

3 CROSS-EXAMINATION

4 BY MR. LEVETO:

5 Q Hello, Mrs. Somma.

6 A Hello.

7 Q If we could go back toward the beginning of some of the  
8 exhibits in the neighborhood of 1-E-1, that will serve to  
9 help us discuss a couple of things there, but it will also  
10 involve, like, 1-F-1 and 2.

11 A Are you saying 1-E-1 and you said 1-F?

12 Q Yes. I think perhaps you should get out 1-F, 1-E-1.

13 Just a second here. Also 1-F-1.

14 A I have 1-I-1. 1-F-1. Anything else?

15 Q That will be good for now.

16 A Sure.

17 Q On those returns, you did say that there was an income  
18 reflected, is that correct?

19 A I said there was an AGI, adjusted gross income.

20 Q And does it list on there what that is from?

21 A Yes. There were wages of \$2,000.00. There was interest

22 that was declared of \$17,212.00. There was a capital gain of  
23 \$7,153.00. There was a loss on a -- probably a trust. I am  
24 not sure. I would have to look. It's a Schedule E -- of  
25 \$1,010.00.

Somma - Cross

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1 And that gives us a total income of \$25,355.00.  
2 Q Okay. And with that tax return, were there documents of  
3 business sales or documents describing or reporting business  
4 sales to the Internal Revenue Service for schedule -- or  
5 schedules that would imply that there were business sales  
6 that brought forth the capital gains and the interest income,  
7 and this type of thing?  
8 A There was schedule attached here. Let me see what we  
9 have here. We have Schedule D for the capital gains, which  
10 was mentioned, of \$7,153.00. And then we have here  
11 Schedule E, and we're referring to Magdan, Incorporated, and  
12 that's where your loss of \$1,010.00 is reflected.  
13 Q Were there any documents there reporting the sale of the  
14 business within that tax return?  
15 A Okay. There was an installment sale income.



16 Q Yes.

17 A Okay.

18 Q Yes, ma'am. What is listed for that?

19 A Good will.

20 Q Okay.

21 A Description of property. Goodwill.

22 Q All right.

23 A Okay.

24 Q Is there anything else on the schedule of business sale

25 or income?

Somma - Cross

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1 A And now we also have an installment sale income of an

2 employment agreement at various, and then there is a money

3 amount of \$1,611.00.

4 Q So, generally speaking, the documentation that's sent in

5 with that return is a documentation that shows that -- if I

6 can speak in the first person -- that I had sold the

7 practice, is that correct?

8 In other words, it's talking about an installment

9 sale, goodwill, and those things that you would expect to see

10 when a business is sold, is that correct?

11 A Yes. You would expect to see schedules attached to the  
12 business that's sold.

13 Q So, that tax return clearly shows that, the breakdown of  
14 the income, and it shows where that income came from in --  
15 what was that, in 1993, I believe?

16 So, there was no Schedule C -- you can answer the  
17 last question. I'm sorry.

18 A That's okay. You are right.

19 Q There was no Schedule C. There was documentation that  
20 the business was sold. So, the tax return kind of fully  
21 tells that story?

22 In other words, there is no business, there is no  
23 Schedule C, but there is the inference that the reason there  
24 is no Schedule C is because something happened to the  
25 business, is that correct?

Somma - Cross

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1 A It's declaring that there was an installment sale income  
2 schedule attached. It doesn't fully describe, though, that  
3 it's your business that was sold. It just simply addresses  
4 the description of property being called goodwill, that that

5 was your business.

6 It's not reflected as your business. I am just

7 taking it for what it says.

8 Q But, it could be inferred as that?

9 For instance, if we now go on to Exhibit 2-C, I

10 believe it's E-2-C, and that is the 1993 Nonresident Alien

11 Tax Return.

12 A 2-C? Okay. I have it. 2-C?

13 Q Yes.

14 A I have it in my hand. Okay.

15 Q Okay. So, 2-C showed a Schedule C, is that correct?

16 A Yes. Yes, it did.

17 Q So, a reasonable person might infer that 1-E-1 with a --

18 '93, with no Schedule C from Dan and Margaret Leveto, there

19 certainly were not gross receipts from the veterinary

20 hospital, correct, the gross income which reflects

21 \$25,355.00?

22 A Gross receipts that reflect that came mainly, I would

23 say, from your interest.

24 Q Right. But, I mean, there was no Schedule C, there was

25 no veterinary receipts?

1 A Okay.

2 Q Exhibit 2-C --

3 THE COURT: Are you talking about '93?

4 MR. LEVETO: Yes, Your Honor. Yes. 1993.

5 THE WITNESS: On his 1040.

6 MR. LEVETO: Yes. On my 1040.

7 THE COURT: But, you said there was no Schedule C,  
8 though.

9 THE WITNESS: No. He said --

10 MR. LEVETO: I'm sorry. Maybe I did say that. I  
11 didn't mean that. On the '93 income tax return on 1-E-1,  
12 there is probably not a Schedule C. I think I am correct on  
13 that.

14 THE COURT: I thought you were talking about 2-C.  
15 That one has a Schedule C on it.

16 MR. LEVETO: Right. I am talking about these two  
17 returns because they are going to reflect --

18 THE WITNESS: What return we going to refer to now?

19 Q Okay. 1-E-1. I just want to make sure that there is  
20 not a Schedule C.

21 A 1-E?

22 Q I think we just had that.

23 A Okay. You do not have a Schedule C on the 1-E-1.

24 Q There is not a Schedule C?

25 A That's correct.

Somma - Cross

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1 Q Okay. And on the 2-C, that same year for Center

2 Company, there is a Schedule C showing the veterinary

3 receipts, is that correct?

4 A There is a -- yes.

5 Q Okay. So, we went through -- for the sake of not

6 putting everyone to sleep, let's say that we went through

7 several years, that we could match images of the years, that

8 where -- when it disappeared from one, it appeared on the

9 other.

10 And those things, even though we covered them

11 separately when Dan and Margaret Leveto's tax returns stopped

12 showing the Schedule C and the gross receipts -- the gross

13 receipts showed up on Center Company?

14 A Right. It was your reflecting. Not you. I didn't mean

15 you personally.

16 Q Yes, ma'am.

17 A The Center Company is now reflecting on Schedule C, they  
18 are mentioning it as Vericon Corporation, Trustee, Center  
19 Company, but they are using the 388 Edgewood as your address.

20 Q Yes. That's another confusing point to me.

21 A Well, I didn't put it there. It was put on the return  
22 by somebody else.

23 Q Okay. I found that you had said that for 1995, and that  
24 was 2-I, and I don't believe that the other returns that I  
25 saw reflected that, I think they were reflecting Airport Road

Somma - Cross

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1 on the Turks and Caicos Islands?

2 A As it goes on, the Caicos comes into play, yes. But, in  
3 the beginning, you were showing them in Meadville where it  
4 was Conneaut, or it was this new address.

5 Q So, you are saying that on the -- like, the 1991 Center  
6 Company 1040 NR, the address is 388 Edgewood Drive?

7 A No. I am looking on the Schedule C, not on the return  
8 itself.

9 Q On the Schedule C?

10 A Yes.

11 Q The 388 Edgewood Drive, that's basically a home having  
12 the business address. So, for the Schedule C, that would be  
13 fine because it could be construed as the location of the  
14 veterinary business?

15 A It is saying Vericon Corporation, Trustee, and Center  
16 Company, and then it said the business address, and this is  
17 on the Schedule C, was 388 Edgewood Drive.

18 Q I understand. I am just saying, for some reason,  
19 evidently it was juxtaposed from the 338 Conneaut Road, which  
20 was the physical address of the business, or the  
21 Schedule C -- or the Schedule C income source?

22 A Um-hum.

23 Q Okay. So, we have several years that we can say where  
24 they disappeared from Langdon and Leveto Veterinarian  
25 Hospital as filed by me, they appeared on Center Company's

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1 Schedule C, which basically is showing the veterinary  
2 receipts still being reported.

3 That's an important factor here. That's all I am  
4 trying to get at is, because your testimony so far has said

5 that, but it's just been spread out in so many exhibits.

6 THE COURT: Just ask a question, Mr. Leveto.

7 MR. LEVETO: Okay.

8 Q Is that a reasonable inference to say that the two were,  
9 where it left one, it appeared on the other?

10 A I wouldn't like to say exactly that because that would  
11 open up other questions by having something disappear off one  
12 and appear on the other because it's telling me that you are  
13 changing your entities and you are going now from filing as  
14 Mr. Leveto into filing as a trust for your company.

15 So, and that's where you are reflecting your  
16 Schedule C. And that's something else that -- I may not be  
17 quite, quite desperate on explaining all of that to the  
18 jurors, and I don't want to confuse them.

19 Q Because it really is a little confusing?

20 A It is confusing. And, again, I don't feel as though I  
21 am the expert on that.

22 I can say this, though: That your return as an  
23 individual with Mrs. Leveto at the time did not reflect the  
24 Schedule C. But, in 1993 there was a trust that did appear  
25 that reflected your Schedule C. I can say that because



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1 everybody knows that I've said that in court.

2 Q Right. And it looks like 2-C, 2-D, 2-B, 2-C, 2-D all  
3 reflect Schedule C's and all reflect veterinary receipts, as  
4 well as 2-A. So, 2-A, B, C, D reflect veterinary receipts?

5 A It's reflecting the veterinary receipts under the trust.

6 Q On the Schedule C?

7 A On the Schedule C. And then that money is reported on a  
8 1040 NR account of the Caicos Islands, and that's why there  
9 is no tax.

10 Q You spoke of the years '94, '95, the Schedule B, or the  
11 B sheet that discussed interest in a foreign account?

12 A Um-hum.

13 Q Could you tell me, are there any criteria that makes one  
14 responsible to report that, or are there any numbers or  
15 balances that one does not have to, or perhaps back at this  
16 time, one does not need to X that box yes?

17 Is there a certain precedent or a threshold that  
18 one has to report it?

19 A There is nothing that I know, as far as a threshold  
20 goes. It just simply addresses the fact that if you have

21 signed or you are holding any kind of interest in a bank or  
22 other financial institution that is outside of the United  
23 States, such as in the Grand Turk Islands, that you should  
24 reflect that.

25 It also is saying if you are a beneficiary of a

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1 trust, a foreign trust, you may, in fact, be required to file  
2 a 3520-A. That is another type form that -- I don't know if  
3 you come under that. I'm not sure. But, that's also checked  
4 off no.

5 And, again, as I explained this a little bit to the  
6 jurors, that the people that have signatures on bank accounts  
7 in foreign countries, or have any kind of holdings there,  
8 that are in the military or on a military base, they are not  
9 required. They are the exemptions. Other than that, you  
10 should have marked it yes.

11 Q I should have marked it yes.

12 Can you tell me -- that's okay. We are speaking in  
13 the first person here.

14 A Yes, we are. You said that. You brought it up first.

15 Q Right. There is a -- have you ever heard of a

16 \$10,000.00 balance to where it's reportable for an account?

17 Does that ring any kind of bell at all?

18 A Say this again.

19 Q A \$10,000.00 balance.

20 In other words, if anytime within the year the

21 account goes to or above \$10,000.00.

22 A No. If you were reading the bottom of the Schedule B,

23 it doesn't go into it, doesn't give you line figures, as far

24 as money goes. It simply says if you have signed or -- now,

25 we are not saying that if you file these forms that are

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1 required that you are going to be liable for anything.

2 We are just simply saying that you should have

3 filed them and you should have marked it yes. If your name

4 is on a foreign bank or a -- or any kind of a foreign

5 document of this nature, banking or otherwise, financial

6 statements, or something like that, you should have marked it

7 yes.

8 I am not going into what the tolerances are, 10,000

9 better or less. No, I am not going into that. I am just

10 simply addressing what is on the return.

11 Q So, you are saying you are not going into it, in other

12 words?

13 A You just said about the 10,000 limit.

14 Q Are you aware of it?

15 A No, I am not totally aware of it. That's why I don't

16 want to go into it.

17 Q It is an important point. So, that if you are not aware

18 of it, that's fine. So, that there is a good reason we need

19 to travel there then.

20 You had spoke on some of the amended returns and

21 you went over them, and we won't painfully go over them

22 again, but many of these, all of these zeroed returns that

23 you talked about, they had explanations there, in other

24 words, you read on -- if you would like to get one of them,

25 perhaps we can look at it, like 1-D-3.

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1 A 1-D-3?

2 Q Yes.

3 A I have it.

4 Q Okay. So, you said on the amended return, if I am not

5 mistaken, there was an explanation on the return itself and

6 then there was an attachment of a couple of pages?

7 A Not on this one. Maybe on the next one.

8 Q Okay. Let's try another one. I'm sorry.

9 A I am familiar somewhat with what you are talking about,

10 though.

11 Q So, between the explanation and the attachment, were

12 there any notations on the return of any discussions with me,

13 or did the IRS write me anything or refute anything that was

14 said there, or was what was said or what was there improper

15 by anyone's notations on the return, or anything like that?

16 A No. What are you referring to as notations on a return?

17 You mean, did we write on the return that we --

18 Q Was there anything sent back to me refuting that? Does

19 the return say that?

20 In other words, you talked about one return that

21 the IRS actually filled in some numbers.

22 A Because there was a W-2 attached and they are able to do

23 that. They were just editing or coding it, yes. Okay.

24 Q On these returns, there was nothing filled in, there was

25 nothing, no correspondence noted, or anything like that, is

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1 that correct?

2 A Okay. On these returns, they were not able to -- you

3 amended the return. You did the changing --

4 Q Yes.

5 A -- by taking out the figures. In other words, the

6 figures that were reflected on the 1040, you amended them now

7 and said, I changed my mind, take them out. So, you are

8 editing them out when you put brackets. You will see all

9 these returns. And this is what I am talking about, the

10 first line, it has ordinary reported income was \$1,936.00.

11 Then he is going to change it and he is decreasing it by the

12 \$1,936.00, which leaves it zero for the correct amount. You

13 have done this on every line. You are making every line now

14 read zero. And the reason for that was what you attached in

15 the back when you included, fraudulently induced me to report

16 income, and things of that nature. Okay?

17 Why would we make changes and send you letters, and

18 so forth, on something like that?

19 Q Well, I am not sure when you had said that. I -- you

20 know, I guess I have to ask you. You are saying I changed my

21 mind, although wouldn't it look more like I perhaps learned

22 something or thought something differently and supplied the

23 IRS with that information? I mean, that's really what I did

24 there with the two pages and what I had said.

25 So, I just wanted to clear my -- that there was an

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1 explanation for what I did as I guess she testified to that.

2 MS. CALVIN: Your Honor, we would ask if he would

3 ask a question, please.

4 THE COURT: Ask a question.

5 MR. LEVETO: I'll try to do better at that. I will

6 try to do better at that.

7 Q You had testified, as you went through different tax

8 returns, of different trusts of Newbury, ASTCO,

9 Lac La Hache, Trawg, and all of these types of things.

10 I guess, as a general question, without you having

11 to go over all of them, but did you find anything about me on

12 those?

13 In other words, was my name on them, or was

14 anything on there regarding me? Because I am not really

15 familiar with those, and I would just like to know perhaps a  
16 little more, because Ms. Calvin went through many, many, many  
17 returns and the pertinence and the relevance of the returns  
18 was confusing me even because I know about as much as the  
19 jury.

20 THE COURT: Just ask a question. Ask a question.

21 Q Oh. Was there any connection or anything you could find  
22 on there that was my name on any of those?

23 A On the actual return?

24 Q Yes.

25 A No. Your name wasn't the only thing that we came --

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1 that was attached to the return was a showing Center Company  
2 using your address as the business address on the Schedule C.

3 Q Right. So, Center Company, that's way up the ladder  
4 here, was using my address with the Schedule C?

5 A Right.

6 Q And these were maybe trusts that were distributed to, is  
7 that correct?

8 A Well, the trusts now are becoming distributed through



9 other trusts and it is going from one trust to another trust

10 and all coming out of the same place, the Caicos, but it's

11 just changing names from one trust to another. And your name

12 is not reflected on that, no.

13 Q Okay. Okay. You looked at quite a lot of returns, I'm

14 sure, Mrs. Somma, or Miss Somma.

15 Are you aware of any returns that perhaps would

16 show the seller of a business and the buyer of a business

17 both reporting gross receipts when the business is sold?

18 A Would I be aware of them having -- you are confusing me.

19 Q Okay. Would it -- would you believe it would make any

20 sense for a business to be sold and a business to be bought

21 by person B, person A selling the business, and say it was

22 sold at the beginning of 1993?

23 A Um-hum.

24 Q Would you have any reason to believe that the receipts

25 of that business would be shown for 1993 by the buyer or the

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1 buyer and the seller for that business?

2 A If he sold the business in January of 1993?

3 Q Yes.

4 A And then in December of 1993 when he is filing the  
5 return, would it reflect any gross receipts from that  
6 business from the seller of the business to the buyer?

7 Q Yes, the seller.

8 A Let's say the seller and the buyer, when they fill out  
9 their '93 taxes for April 15th, 1994, okay, you being the  
10 seller of the business would not necessarily have gross  
11 receipts because the buyer of the business if he, in fact,  
12 continued the business from the first date of buying the  
13 business would have the gross receipts, not the guy who sold  
14 it.

15 Q So, it is safe to say if the seller -- if the gross  
16 receipts disappear from the seller and they appear from the  
17 buyer -- on the buyer's tax return, that makes sense?

18 MS. CALVIN: Objection, Your Honor. This woman is  
19 a records custodian for the Record Center. She is not an  
20 expert in tax law, nor is she an accountant.

21 THE COURT: Well, if she feels she can answer the  
22 question, she may. If she feels that's beyond her knowledge,  
23 why, she can tell us that.

24 THE WITNESS: Well, the only thing I would reflect

25 at this point would be, that if there had been gross receipts

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1 that were still being withheld from the seller, in other  
2 words, maybe it was money that was due and owed to him from a  
3 previous year, and it may be receipts that he should report  
4 that was not included in the sale of the business, yes, then  
5 he would report gross receipts for that year in that sense.  
6 That's all I can tell you though.

7 It's really -- now you are talking about something  
8 that audit would have to look at to see maybe if -- and  
9 that's not me.

10 Q Okay. Let me -- and I don't want to go anywhere I am  
11 not supposed to here, but let me just make it simpler.

12 And if you don't want to answer, that's fine,  
13 Mrs. Somma.

14 A Okay.

15 Q Would you say -- and we are not talking about any  
16 receipts split or left over or somebody not reporting.

17 Would you say that it is normal for a business that  
18 is sold, that the gross receipts disappear from that business  
19 and they show up on the buyer if the business stays the same?

20 A It could be. I really don't know though. I don't want  
21 to answer it because I may be wrong.

22 Q Okay.

23 MR. LEVETO: That's all. Thank you.

24 THE COURT: Any redirect, Ms. Calvin?

25 MS. CALVIN: Very briefly.

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1 THE COURT: I am just trying to finish this witness  
2 up so she can get out of town if she wants to.

3 REDIRECT EXAMINATION

4 BY MS. CALVIN:

5 Q Miss Somma, you indicated that 2-C, I believe it was,  
6 showed an address of 388 Edgewood Drive?

7 A Yes.

8 Q Do you know what that address is?

9 A That is the address of Mr. Leveto.

10 Q As shown on one of the individual tax returns?

11 A Yes.

12 Q And I guess I should ask you, what is a 1040 NR?

13 A A 1040 NR is a Nonresident Alien Return that is used

14 for -- by fiduciary trusts when they are going to have a

15 trust that is using a business address of the Caicos, and

16 Grand Turk Islands, and places of that nature.

17 Q So, the gross receipts of 1993 were reported on the --

18 the Center Company return was 1040 NR?

19 A It would be reported on 1040 NR.

20 Q So, Center Company was a 1040 NR filing?

21 A Yes.

22 Q Okay.

23 MS. CALVIN: I have no further questions, Your

24 Honor.

25 THE COURT: Thank you, ma'am. You are excused. I

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1 assume you don't plan to recall her, Ms. Calvin?

2 MS. CALVIN: No, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 (The witness was excused.)

5 THE COURT: Ladies and gentlemen, we'll recess for

6 the evening and we'll start at nine o'clock tomorrow morning.

7 Please keep in mind, don't talk about the case, and

8 take your notebooks up to the jury room. Don't leave them

9 here.

10 (Court recessed on Monday, May 23, at 5:05 p.m.)

11

12 \* \* \* \* \*

13 I certify that the forgoing is a correct transcript

14 from the record of proceedings in the above-entitled matter.

15

16 S/Michael D. Powers  
Michael D. Powers  
17 Official Reporter

18 \*\*\*\*\*NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE\*\*\*\*\*

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